Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 96-319
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	
Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S WEST, Inc., for Waiver of Section 22.903 of the Commission's Rules	)	

NOTICE OF PROPOSED RULEMAKING, ORDER ON REMAND, AND WAIVER ORDER

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Comments and Replies are to be filed in WT Docket 96-162 only.

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we initiate a comprehensive review of our existing regulatory framework of structural and nonstructural safeguards for local exchange carrier (LEC) provision of commercial mobile radio services (CMRS).[1] We propose herein to eliminate our current Part 22 requirement that Bell Operating Companies (BOCs) must provide cellular service through a structurally separate corporation,[2] and we seek comment on whether we should adopt a transition to this end. This Notice thus responds to one of the issues remanded to the Commission by the Sixth Circuit's *Cincinnati Bell* decision.[3] We also propose rule changes necessary to implement those provisions of the Telecommunications Act of 1996[4] that govern the joint marketing of CMRS and landline services, protections for customer proprietary network information (CPNI) and network information disclosure.

2 By instituting this proceeding, we seek to implement further the mandate of the 1993 Budget Act to treat similar commercial mobile radio services similarly by placing all CMRS licensees under a uniform set of nonstructural safeguards.[5] We have previously recognized that the 1993 Budget Act revisions to the Communications Act reflect a Congressional objective that, "consistent with the public interest, similar commercial mobile radio services are accorded similar regulatory treatment."[6] Further, in the *CMRS Third Report and Order*, the Commission concluded that all CMRS -- including one-way messaging and data, and two-way voice, messaging and data -- are competing services or have the reasonable

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[1] This Notice will primarily examine service safeguard issues with respect to those enumerated services that have been referred to as broadband CMRS: Domestic Public Cellular Radio Telecommunications Service (cellular) and broadband Personal Communications Services (PCS). *See* 47 C.F.R. § 22.9(a) (4) and (7). We also will seek comment as to whether the revised service safeguards proposed herein for LEC PCS should be extended to LEC provision of Specialized Mobile Radio (SMR).

[2] 47 C.F.R. § 22.903.

[3] *Cincinnati Bell Telephone v. FCC*, 69 F.3d 752 (6th Cir. 1995) (*Cincinnati Bell*).

[4] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) ("the 1996 Act"), amending the Communications Act of 1934, as amended, 47 U.S.C. § § 151, *et seq.* (" the 1934 Act" or "the Act"). For purposes of this proceeding, we define the terms "affiliate," "BOC," "in-region state," and "interLATA service," as those terms are defined in Sections 3(a)(33), 3(a)(35), 271(i)(1), 3(a)(42), respectively, of the Act. In addition, we define "AT&T Consent Decree" as that term is defined in Sections 3(a)(34) and 601(e)(1) of the Act; and "local exchange carrier" and "incumbent local exchange carrier," as those terms are defined in Sections 3(a)(44) and 251(h) of the Act.

[5] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993)(Budget Act).

[6] *See* Budget Act at § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. at 392; *CMRS Second Report and Order*, 9 FCC Rcd at 1418, *citing* H.R. Rep. 102-213, 103rd Cong., 1st Sess. 494 (1993) (Conference Report); *see also* H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-60 (House Report).

potential to become competing services in the CMRS marketplace.[7] A central focus of our review is the question of whether the structural separation requirements of Section 22.903 continue to serve the public interest. We will include in our review of our existing rules the examination of the broader competitive issues raised by provision of in-region wireless services by all local exchange carriers, and of the effects of the 1996 Act on our existing and proposed rules.

II. EXECUTIVE SUMMARY

3. This Notice includes several proposals designed to facilitate a smooth transition from structural separation to the more flexible competitive paradigm established by the 1996 Act. These proposals are discussed in detail in Sections IV, V and VI, below. A chart depicting our current requirements and the proposals made herein, is attached as Appendix C for illustrative purposes only. In Section IV, we examine the restrictions imposed in Section 22.903 of the Commission's Rules regarding provision of cellular service by the BOCs. In particular, in response to the decision of the Court of Appeals for the Sixth Circuit in *Cincinnati Bell*, we consider the continued necessity of the requirement that a BOC seeking to offer cellular service do so through a separate subsidiary corporation.

4. We propose two options. The first option would generally retain streamlined separate affiliate and nondiscrimination requirements of Section 22.903 for BOC provision of cellular service within the BOC's area of operation (*i.e.*, "in-region"), but would sunset the restrictions for a particular BOC when that BOC receives authorization to provide interLATA service originating in any in-region state. For example, we propose to retain the prohibition against a BOC cellular affiliate owning any landline facilities that the incumbent affiliated LEC uses in the provision of landline local exchange services, but we would permit the cellular affiliate to own landline facilities for the provision of, among other things, competitive landline local exchange service (CLLE). In addition, we seek to implement that portion of the 1996 Act that permits a LEC to market jointly and resell the cellular service of its separate subsidiary. In so doing, we seek comment on whether permitting integrated provision of resold cellular and landline service would raise anticompetitive concerns. We also pose questions regarding the treatment of customer proprietary information and network information.

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[7] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, GEN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988, 7996, 8001-36 (1994) (*CMRS Third Report and Order*). *See also* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, First Report, 10 FCC Rcd 8844 (1995) (*CMRS Annual First Report*).

5. The second option we propose is to eliminate Section 22.903 immediately in favor of the uniform safeguards for LEC provision of PCS, and potentially other CMRS, proposed in Section VI of this Notice. This option differs from Option 1 primarily in that it would eliminate the requirements for independent operation, separate officers and personnel, and arm's-length transactions between the BOC and its cellular affiliate, although such transactions would still be subject to Part 64 cost allocation rules. Regardless of which option we ultimately adopt, this Notice grants the BOCs immediate interim relief through a waiver of our current rules as they apply to out-of-region cellular service, pending the outcome of this rulemaking. Thus, a BOC will no longer need to have in place a separate subsidiary to provide cellular service outside of its service area.

6. In Section V, we explore ways to achieve regulatory parity among wireless providers. In particular, we reexamine the basis for excluding LECs other than BOCs from Section 22.903. While we conclude that the rationale for requiring BOC structural separation could be extended to Tier 1 LECs, we decline to propose that Section 22.903 apply to such LECs in light of our proposal to eliminate the rule, either immediately or after a sunset period. We do propose, however, that the safeguards proposed in Section VI extend to all Tier 1 LECs rather than just the BOCs.

7. In Section VI, we propose a uniform set of streamlined competitive service safeguards for the in-region provision of PCS and other CMRS by Tier 1 LECs. These safeguards are based on a "Plan of Nonstructural Safeguards Against Cross-Subsidy and Discrimination" filed by PacTel in 1995. We propose that all Tier 1 LECs providing broadband PCS within their in-region states file with the Commission a nonstructural safeguard plan that includes the following elements:

(1) a description of a separate affiliate (defined with reference to the 1985 Competitive Carrier *Fifth Report and Order*) for the provision of PCS;

(2) a description of compliance with our Part 64 and Part 32 accounting rules, with copies of the relevant cost allocation manual changes attached;

(3) a description of planned compliance with all outstanding interconnection obligations;

(4) a description of compliance with all outstanding network disclosure rules; and

(5) a description of planned compliance with the customer proprietary information requirements in new Section 222 of the 1996 Act.

In addition, we seek comment regarding whether to adopt a sunset period for these rules, and whether to apply these safeguards to Tier 1 LECs' in-region provision of CMRS other than PCS.

III. REGULATORY BACKGROUND

8. Currently, we have distinct rules for BOC provision of cellular service versus non-BOC provision of personal communications service (PCS) and other commercial mobile radio services. BOCs are required to provide cellular service through structurally separate subsidiary corporations, whereas all other LECs may provide cellular service on an unseparated basis. Moreover, we have declined to impose these restrictions on LEC, including BOC, provision of other CMRS, such as PCS and specialized mobile radio (SMR) service.[8]

9. In numerous recent waiver requests, the BOCs have sought relief from our cellular structural separation rule on the grounds of changed circumstances and competitive necessity.[9] The BOCs' challenges to the continued viability of the restrictions contained in Section 22.903 are premised on two points: (1) the Commission's existing interconnection rules and accounting safeguards are sufficient to protect against anticompetitive behavior by the BOCs; and (2) LECs that are not BOCs are treated differently with respect to the provision of cellular service and other commercial mobile radio services. In response, parties opposing grant of such waivers have cited the broader competitive implications of the individual waiver requests, and have generally disputed the BOC claims. A comprehensive record has thus been generated on these issues in response to these waiver requests, and with respect to PacTel's PCS Nonstructural Safeguards Plan.[10]

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[8] *See* Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GEN Docket No. 94-90, Report and Order, 10 FCC Rcd 6280 (1995) (*Wireline SMR Order*), *recon. pending*; Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, 7747-52 (1993), *reconsideration*, 9 FCC Rcd 5154 (1994) (*Broadband PCS Order*); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994), *reconsideration pending* (*CMRS Second Report and Order*).

[9] *See* Bell Atlantic NYNEX Mobile's Request for a Waiver of Section 22.903 of the Commission's Rules, *Public Notice*, DA 96-37 (released January 19, 1996); Motion of Southwestern Bell Mobile Systems, Inc., Memorandum Opinion and Order, FCC 95-436, CWD-95-5 (released October 25, 1995) (*SBMS Waiver Order*); Ameritech's Petition for Partial Waiver of Section 22.903 of the Commission's Rules, *Public Notice*, DA 95-2198 (released October 19, 1995); US West, Inc. Request for a Waiver of Rule 22.903, *Public Notice*, DA 95-2478 (released December 14, 1995); BellSouth Corporations's Request for Resale Authorization, *Public Notice*, DA 95-1901 (released August 31, 1995) (BellSouth Resale Request). To the extent the records developed in the several waiver proceedings, and in other related licensing proceedings, discussed below, have a bearing upon the issues examined in this rulemaking, we incorporate such pleadings by reference.

[10] *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services' Plan of Nonstructural Safeguards Against Cross-Subsidy and Discrimination, GEN Docket No. 90-314, Order, DA 96-256 (Wir.Tele. Bur. Feb. 27, 1996) (*PacTel Plan Order*) (approving PacTel Plan, subject to outcome of this rulemaking).

10. A central purpose of the 1996 Act is to provide open access to local and other telecommunications markets in order to encourage entry by new competitors.[11] The legislative history states that the 1996 Act is intended to "provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition."[12] Structural separation was originally imposed over a decade ago on certain local exchange carriers to prevent them from leveraging their market power in the local exchange market into other competitive markets, such as cellular service. With this Notice, we move from this regulatory model to the competitive paradigm established by the new legislation and the current telecommunications marketplace.

11. At the outset, we remain cognizant that CMRS providers will, in the very near term, need to enter into a series of agreements with local exchange incumbents for such things as the mutual exchange of traffic, the location of equipment, and the sharing of network functionalities.[13] Effective competitive safeguards, where a demonstrated need exists, should permit competitors to construct their networks, implement their business plans, and begin offering service to customers with the reasonable assurance that the incumbent local exchange carrier will not be able to extend its market power into the critical new PCS market. The question of what these safeguards should be and whether they should remain in place for a transitional period is the primary subject of this rulemaking. In order to adequately answer this question, we need to review the reasons behind the Commission's adoption of its current safeguards.

A. Derivation of Current Safeguards

1. BOC Cellular Structural Separation

12. The original version of Section 22.903 was adopted as Section 22.901 in 1981, when the Commission amended Part 22 of the rules to provide for the authorization of two cellular licensees in each market -- one wireline carrier and one non-wireline carrier.[14] To preserve the competitive potential of the non-wireline cellular provider, the Commission

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[11] *See, e.g.*, Statement of Senator Pressler, "The more open access takes hold, the less other government intervention is needed to protect competition." Cong. Rec. S7889 (daily ed. June 7, 1995) (statement of Sen. Pressler); Statement of Senator Hollings, "Competition is the best regulator of the marketplace. But until that competition exists, until the markets are opened, monopoly-provided services must not be able to exploit the monopoly power to the consumers' disadvantage. Competitors are ready and willing to enter new markets as soon as they are opened." Cong. Rec. S7984 (daily ed. June 7, 1995) (statement of Sen. Hollings).

[12] *See* S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1 (1996) (Joint Explanatory Statement).

[13] *See, e.g.*, Section 101 of the 1996 Act, adding Part II, entitled, "Development of Competitive Markets," to Title II of the 1934 Act.

[14] *See* Cellular Communications Systems, 86 FCC 2d 469 (1981)(*Cellular Order*); Cellular Communications Systems, 89 FCC 2d 58 (1982)(*Cellular Reconsideration Order*); and Cellular Communications Systems, 90 FCC 2d 571 (1982)(*Cellular Further Reconsideration Order*).

required the wireline carrier to provide its cellular service through a structurally separate subsidiary, *i.e.*, an independent corporation with separate officers, separate books of account, and separate operating, marketing, installation and maintenance personnel, and also prohibited cellular licensees affiliated with landline LECs from owning facilities for the provision of landline telephone service. The structural separation requirement was intended to protect against improper cross-subsidization, to assure equitable interconnection arrangements, and to make the detection of anti-competitive conduct "somewhat easier for the regulatory authorities."[15]

13. In 1982, the Commission revised Section 22.901 to apply only to AT&T and its affiliates.[16] In 1983, the Commission further amended Section 22.901 in response to the breakup of AT&T under the divestiture agreement entered into by AT&T and the Department of Justice.[17] The chief question addressed was whether the BOCs possessed the potential to cross-subsidize and discriminate, and if so, whether nonstructural safeguards alone would provide adequate protection. The Commission concluded that BOC control over local exchange services provides an opportunity for anti-competitive conduct with respect to customer premises equipment (CPE), enhanced and cellular services, much the same as it did for AT&T.[18] The Commission further found that the BOCs would have the financial resources to provide cellular service through structurally separate subsidiaries.[19]

2. Current Part 22 Requirements

14. A final revision of the cellular structural separation requirement occurred in the 1994 *Part 22 Rewrite Order* as part of the Commission's comprehensive reorganization of Part 22 of our Rules. In that Order, Section 22.903 was amended to incorporate the provi-

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[15] *Cellular Order*, 86 FCC 2d at 493-95.

[16] *Cellular Reconsideration Order*, 89 FCC 2d at 79 (in "determining whether a particular carrier should be required to operate through a separate subsidiary, the decision must be based, to the extent possible, on how such a requirement will affect the likelihood that the carrier would otherwise engage in the practices that the requirement is designed to guard against and the ability of the carrier to withstand the costs associated with the requirement.")

[17] *BOC Separation Order*, 95 FCC 2d at 1120. Under the divestiture agreement, the 22 BOCs owned by AT&T were divested and consolidated into seven regional holding companies. *U.S. v. American Telephone & Telegraph Company and U.S. v. Western Electric Company*, Modification of Final Judgement, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983) (*MFJ*).

[18] *BOC Separation Order*, 95 FCC 2d at 1131-37.

[19] *Id.* at 1137-40. At the same time, the Commission indicated that it would review the appropriateness of the separation conditions within two years following the BOCs' compliance with the *Computer II* structural separation conditions, as modified in the *BOC Separation Order*. *Id.* at 1140.

sions of former Section 22.901.[20] Section 22.903 essentially consists of two parts: the requirement that BOCs provide cellular service through a separate corporation; and a series of restrictions on the operation of that separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service. In addition, subsection (d) requires that all transactions between the BOC and the cellular subsidiary or its affiliates be reduced to writing and that a copy of all agreements (other than interconnection agreements) between such entities be kept available for inspection upon reasonable request by the FCC. It also requires that all affiliate contracts with respect to cellular/landline interconnection be filed with the Commission; however, this requirement does not apply to any transaction governed by an effective state or federal tariff. Subsection (e) prohibits BOCs from engaging in the sale or promotion of cellular service on behalf of the separate corporation. This prohibition does not extend to joint advertising or promotions by the landline carrier and its cellular affiliate. Finally, the rule prohibits the provision of BOC customer proprietary network information (CPNI) to the cellular affiliate, unless such CPNI is made publicly available on the same terms and conditions.[21]

3. Nonstructural Safeguards for Other LEC CMRS

15. Broadband PCS Proceeding. The *Broadband PCS Order*[22] found that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks, and that these economies will promote more rapid development of PCS, yield a broader range of PCS services at lower costs to consumers, and should encourage LECs to develop their wireline architectures to better accommodate all PCS. Thus, the Commission declined to impose structural separation for PCS providers affiliated with LECs, including the BOCs, reasoning that such limitations on the ability of LECs to take advantage of their potential economies of scope would "jeopardize, if not eliminate, the public interest benefits

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[20] Section 22.903 of the Commission's rules was amended effective Jan. 1, 1995. *See* Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994) (Appendix A-40) (*Part 22 Rewrite*), *reconsideration pending.*

[21] In our *Part 22 Rewrite* proceeding, no substantive change to Section 22.903 was intended. An inadvertent change was made, however, in the description of the prohibition on joint sale or promotion of cellular and landline service in Section 22.903(e) that deleted the modifying phrase of "except on a compensatory, arms-length basis" contained in old Section 22.901(d). Southwestern Bell filed for reconsideration of this change in the text of the rule. In light of the joint marketing authority granted the BOCs under Section 601(d) of the 1996 Act, as implemented in this proceeding, the relief requested by Southwestern is rendered moot. *See* discussion *infra* at Section IV.

[22] *Broadband PCS Order*, 8 FCC Rcd at 7748 n. 96, 7751-52 (LECs may hold PCS licenses, except where barred by their cellular holdings; commencement of service by LECs would be contingent upon the LEC implementing an acceptable plan for nonstructural safeguards against discrimination and cross-subsidization).

sought through LEC participation in PCS.[23] The Commission further concluded that the cellular-PCS cross-ownership policies "are adequate to ensure that LECs do not behave in an anticompetitive manner."[24] The Commission also found that existing accounting safeguards were sufficient to protect against cross-subsidization by the LECs, and therefore declined to impose additional cost-accounting rules on LECs that provide PCS service.[25] The *Broadband PCS Order* also reiterated that commencement of PCS operations by LECs would be contingent on the LEC implementing an acceptable non-structural safeguards plan.[26] Finally, although the issue had been raised in the *Broadband PCS Notice*, we declined to eliminate the structural separation requirement for BOCs and their cellular operations, citing the insufficiency of the record.[27]

16. Other CMRS. In the *CMRS Second Report and Order*, the Commission concluded that all LECs with CMRS affiliates must follow the same accounting safeguards that were adopted in the PCS proceeding.[28] The Commission observed that these safeguards were necessary to prevent cost-shifting from the non-regulated affiliates to the regulated ratebase of the local exchange carrier.[29] We also noted that the commenters had raised important issues with respect to the potential role of accounting, structural separation, and other safeguards in promoting a competitive CMRS environment. Although we deferred consideration of these issues to a separate proceeding, we emphasized that the Commission "can play a positive role in fostering this competitive environment by examining and establishing the proper mix of safeguards designed to ensure that no CMRS provider gains an unfair competitive advantage resulting from its size or preexisting position in particular CMRS markets."[30] At that time, due to inadequate notice and an insufficient record, the Commission again declined to address the issue of removing the cellular structural separations requirements

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[23] *See* Part 32 and Part 64 of the Commission's Rules, 47 C.F.R. Parts 32, 64.

[24] *Id.* at 7751 n.98, *citing* Computer III Remand Proceedings, 6 FCC Rcd 7571, 7614-26 (1991) *(BOC Safeguards Order), vacated in part, California v. FCC,* 4 F.3d 1505 (9th Cir. 1993) (*California II*) (prior and subsequent history omitted).

[25] *See* 47 C.F.R. § 64.901 and § 64.902.

[26] *Broadband PCS Order* at 7748 n.96.

[27] *Id.* at 7751 n.98.

[28] *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1492-93 (1994) (*CMRS Second Report and Order*), *reconsideration pending.*

[29] *CMRS Second Report and Order*, 9 FCC Rcd at 1492.

[30] *Id.* at 1492-1493.

for the BOCs.[31] In addition, in our recent order permitting wireline carriers to provide specialized mobile radio ("SMR") service, we did not require LECs to establish structurally separate entities.[32] We did state, however, that LECs providing SMR service, or CMRS generally, would have to comply with accounting safeguards and affiliate transaction rules.[33]

B. Recent Developments

17. Cincinnati Bell. On November 9, 1995, the Sixth Circuit Court of Appeals found that the Commission had failed to adequately justify its retention of Section 22.903 in the *Broadband PCS* docket, in light of the Commission's decision permitting LECs (including BOCs) to provide PCS under nonstructural safeguards.[34] The court stated that the Commission was required to give a reasoned explanation of its disparate treatment of the Bell companies.[35] The court directed the Commission to reexamine whether the Section 22.903 "still in any way serves the public interest." Accordingly, the court remanded the matter to the Commission with instructions to promptly conduct an inquiry into whether the structural separation requirement continues to serve as "a necessary regulatory restriction on BellSouth and other Bell Operating Companies."[36]

18. BOC Requests for Relief from Section 22.903. Both before and after the *Cincinnati Bell* decision, a number of BOCs filed waiver petitions seeking varying forms of relief from the requirements of Section 22.903. As summarized below, the Commission has granted one such waiver (Southwestern), another has been withdrawn (BellSouth), and the remainder (U S West, Bell Atlantic) are pending.

19. On October 23, 1995, we granted Southwestern Bell Mobile Systems (SBMS) a limited waiver of Section 22.903 to enable it to provide integrated cellular and "Competitive Landline Local Exchange" (CLLE) service outside of Southwestern Bell Telephone

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[31] *Id.* at 1492. Pacific and Ameritech sought reconsideration of these determinations. *See* Petition for Clarification or Reconsideration of Pacific Bell, filed in GEN Docket No. 93-252 at 2-5 (May 19, 1994); Ameritech Petition for Reconsideration filed in GEN Docket No. 93-252 at 1 (May 19, 1994).

[32] *See* Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GEN Docket No. 94-90, Report and Order, 10 FCC Rcd 6280 (1995) (*Wireline SMR Order*), *reconsideration pending.*

[33] *Id.* at 6293.

[34] *Cincinnati Bell,* 69 F. 3d at 765-68. The *Cincinnati Bell* decision also remanded the Commission's cellular attribution and cellular/PCS cross-ownership requirements. These rules are being examined in a separate proceeding.

[35] *Id.* at 768.

[36] *Id.*

Company's (SWBT) local exchange service area.[37] SBMS had sought permission to provide these services on an integrated basis without being required to create a new structurally separate entity.[38] We concluded that the waiver would promote significant Commission objectives by encouraging local loop competition, avoiding duplicative costs, and promoting increased efficiency, thus enhancing SBMS' ability to provide innovative service. We also found that rigid application of Section 22.903 to out-of-region cellular and landline services would not serve the public interest objectives of the rule, and would impose a significant and unnecessary regulatory burden on a potentially valuable service.

20. On November 8, 1995, U S West, Inc. (U S West) filed a request for waiver of Section 22.903 so that its out-of-region telecommunications subsidiaries and affiliates can provide integrated cellular and CLLE services through a single company. Similarly, on January 19, 1996, Bell Atlantic NYNEX Mobile, Inc. (BANM) also sought a waiver of Section 22.903 to the extent necessary to permit BANM to provide integrated competitive landline local exchange services outside the combined Bell Atlantic and NYNEX local exchange service regions. U S West and BANM each argue that its waiver request is identical to the SBMS request, and should be granted under the same rationale.

21. On August 25, 1995, BellSouth Corporation (BellSouth), filed a request seeking authorization to engage in in-region resale of cellular service without the structural separations required by Section 22.903.[39] BellSouth stated that it sought to provide integrated landline local exchange, cellular, and PCS through its incumbent LEC, BellSouth Telecommunications, Inc. (BST), by reselling the cellular and PCS service of its own affiliates, as well as that of unaffiliated providers.[40] BellSouth argued that the structural separation rule no longer serves the public interest, and prevents it from offering customers "one-stop shopping" for integrated wireline and wireless services, while potential competitors such as GTE, AT&T, and Sprint are not subject to the structural separation requirement for landline, cellular and PCS service

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[37] *SBMS Waiver Order* at para. 24.

[38] SBMS emphasized that all of its cellular operations will continue to be structurally separated from those of SWBT, as required by Section 22.903, and that it will provide CLLE service only in markets where the existing LEC is a carrier other than SWBT.

[39] Prior to this request, BellSouth had sought clarification that resale by a BOC does not constitute the "provision" of cellular service for purposes of Section 22.903. The Wireless Telecommunications Bureau found that a reseller of cellular service is engaged in the "provision of cellular service" for purposes of Section 22.903 and thus denied BellSouth's Request. *See* BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp., Petition for Declaratory Ruling, *Order*, DA 95-1401, (Wir. Tele. Bur. June 22, 1995).

[40] Specifically, BellSouth Corporation (BellSouth) sought authorization for its local exchange subsidiary, BST, and its "structurally unseparated" PCS subsidiary, BellSouth Personal Communications, Inc. (BPCI), to resell cellular service on an integrated basis together with landline local exchange service and PCS. *See* BellSouth Reply at 1-2.

offerings.[41] On February 12, 1996, BellSouth formally withdrew its Resale Authorization Request.[42]

22. On October 11, 1995, Ameritech Communications, Inc. (ACI), a newly-formed, structurally separate subsidiary of Ameritech Corporation, requested a limited waiver of Section 22.903 in order to provide integrated in-region local exchange, long distance, and cellular service. ACI was formed prior to the 1996 Act, in part, to enable Ameritech to obtain relief from the MFJ in exchange for opening its local exchange bottleneck to competition. Because ACI is and will remain an entity structurally separated from Ameritech, ACI requests a waiver only of the provisions of Section 22.903 that (1) prohibit a BOC-affiliated cellular carrier from owning landline facilities, and (2) prohibit a BOC affiliate from engaging in the sale and promotion of cellular service.

23. The Telecommunications Act of 1996. The 1996 Act contains specific requirements that BOCs be permitted to enter into previously prohibited or constrained lines of business, including, *inter alia*, in-region interLATA telecommunications services, interLATA manufacturing, information, and electronic publishing services through a separate affiliate.[43] In certain cases, this separate subsidiary requirement "sunsets" after a number of years.[44] With respect to in-region interLATA service, these separate affiliates are under additional structural and transactional constraints similar to, although more stringent than, those contained in Section 22.903(b)-(g), including the requirement that the BOC deal with the separate affiliate on an "arm's length basis."[45] Section 272(c) imposes additional nondiscrimination safeguards on a BOC's dealings with its separate affiliate.[46] With the

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[41] *See, e.g.*, BellSouth Request at 2-15, 18-20.

[42] *See Ex Parte* Letter from Jim O. Llewellyn, BellSouth, dated February 12, 1996, to William F.Caton, Acting Secretary, FCC, Re: BellSouth Corporation, Request for Resale Authorization - DA 95-1901. Notwithstanding the withdrawal of BellSouth's Request, we take administrative notice of the record developed in response thereto prior to the withdrawal, and discuss the issues raised as they relate to the matters under discussion in this rulemaking.

[43] *See* Sections 271 (BOC InterLATA Entry); 272 (BOC Separate Affiliate; Safeguards, includes origination of In-region InterLATA services, Manufacturing, and InterLATA Information services); 273 (Manufacturing by BOCs); and 274 (Electronic Publishing by BOCs). 47 U.S.C. §§ 271-73. The Commission generally is instructed to develop appropriate regulations to ensure against cross-subsidies where the LEC entity is providing assets or services to, or purchasing assets or services from, its nonregulated affiliate. *See* Section 272(c)(2) and 274 (b)(3) and (4), 47 U.S.C. §§ 272(c)(2) and 274(b)(3)-(4).

[44] *See, e.g.*, Section 272(f) and Section 274(g), 47 U.S.C. §§ 272(f) and 274(g).

[45] *See* Section 272(b)(5), 47 U.S.C. § 272(b)(5).

[46] These safeguards: (1) prohibit a BOC from discriminating between the affiliate and any other entity in the provision of goods, services, facilities and information or in the establishment of standards, and (2) require the BOC to account for all transactions with the affiliate in accordance with generally accepted accounting principles. 47 U.S.C. § 272(c). Under Section 272(e), a BOC, and any affiliate that is subject to the Section

addition of new Section 601(d), the 1996 Act expressly permits BOCs to market jointly and sell CMRS together with a variety of landline services.[47] Section 702 of the 1996 Act amended Title II of the 1934 Act to add new Section 222, which contains new requirements for maintaining the confidentiality of carrier information and CPNI.[48]

IV. BOC CELLULAR SAFEGUARDS

A. Introduction

24. In this section we address one of the issues remanded by the Sixth Circuit in *Cincinnati Bell*, "whether the structural separation requirement continues to serve as a necessary regulatory restriction" on the BOCs.[49] We discuss this question below, and propose a series of amendments to the rule intended to provide BOCs sufficient flexibility in serving the public, while preserving our ability, and the ability of BOC competitors, to detect and correct any potential anticompetitive behavior, whether that be cost shifting, interconnection discrimination, or some other form of leveraging the BOCs' dominant position in the local exchange market. We also seek comment whether the public interest would be better served by (1) a transitional arrangement whereby some aspects of our current structural separation requirements would be retained during an interim period or (2) immediate replacement of Section 22.903 with the uniform streamlined safeguards we propose in Sections V and VI for in-region LEC PCS and other commercial mobile radio services.

B. Record on Continued Need for Section 22.903

25. In response to the various BOC waiver petitions, and in *ex parte* filings responding to the Sixth Circuit's *Cincinnati Bell* remand decision, described above in Section II, a record was developed on the question of the continued need for Section 22.903. Insofar as the issues raised in those pleadings directly address the question of structural versus nonstructural safeguards and implementation of the provisions of the 1996 Act regarding

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251(c) incumbent LEC interconnection obligations must: (1) fulfill requests from unaffiliated entities for exchange service and exchange access within a period no longer than it provides such service to itself or its affiliates; (2) not provide any facilities, services, or information concerning its provision of exchange access to the separate affiliates unless such facilities, services, etc. are available to other interLATA service providers in the market on the same terms and conditions; (3) charge the separate affiliate or impute to itself the same rates for access to its local exchange service and exchange access charged to unaffiliated interexchange carriers; and (4) may provide interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are available to all carriers at the same rates, terms and conditions and so long as the costs are appropriately allocated. 47 U.S.C. § 272(e). The subsection (e) requirements do not sunset pursuant to Section 272(f)(1) and (2), 47 U.S.C. § 272(f)(1)-(2).

[47] *See* 47 U.S.C. § 521(d).

[48] *See* 47 U.S.C. § 222.

[49] *Cincinnati Bell*, 69 F. 3d at 768.

BOC provision of CMRS, they are summarized fully in Appendix A.[50] In this section, we highlight the general policy arguments supporting and opposing retention of Section 22.903.

26. In general, the BOCs argue that Section 22.903 is no longer needed to prevent cross-subsidization of cellular operations or to assure nondiscriminatory interconnection, and should be eliminated in its entirety.[51] BellSouth argues, in its Resale Request, that structural separation was intended to foster the competitive development of the new cellular industry, and that the rule was never intended to be either absolute or permanent. BellSouth argues that market circumstances have changed dramatically since the structural safeguards were adopted, and that the rule is no longer needed to deter cross-subsidization and discriminatory interconnection. Continued application of this requirement to the BOCs alone, according to BellSouth, places BOCs at a competitive disadvantage with respect to wireless providers, particularly PCS providers who may offer integrated landline and wireless services.[52] Bell Atlantic claims that "one-stop-shopping" is an important customer requirement, and that recent studies conclude that the vast majority of customers want a single provider for all their telecommunications needs. Bell Atlantic argues that its competitors have already begun to offer packaged services, or have announced their intention to do so in the near future.[53]

27. Southwestern Bell and Bell Atlantic also argue that the public interest would be served by the elimination of the structural separation requirements of Section 22.903 in light of the sufficiency of existing nonstructural safeguards to address any possible concerns regarding cross-subsidization or interconnection discrimination.[54] Southwestern Bell contends that the existing separation rule -- which applies only to the BOCs and only to their cellular service, harms consumers and inhibits competition.[55] Several BOCs have taken the position,

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[50] In particular, the record in response to the BellSouth Resale Request presents the opposing parties' views on the alleged competitive dangers posed by a BOC's direct provision of in-region, integrated landline and cellular service (on a resale basis).

[51] *See, e.g., Ex Parte* Letter from Patricia E. Koch, Bell Atlantic to Mr. William F. Caton, Acting Secretary, FCC, dated December 7, 1995, GEN Docket No. 90-314 -- Personal Communications Service (PCS), Attachment (Bell Atlantic 12/7/95 Ex Parte).

[52] BellSouth Request at 2-6.

[53] Bell Atlantic 12/7/95 *Ex Parte.*

[54] *Ex Parte* Letter from Richard M. Firestone, on behalf of SBC Communications, Inc. and Southwestern Bell Mobile Systems, dated December 15, 1995 to Ms. Rosalind Allen, Wireless Telecommunications Bureau, FCC, Attached *Ex Parte* Presentation at 1-2 (SBC 12/15/95 Letter); Bell Atlantic 12/7/95 *Ex Parte*, Attachment.

[55] SBC 12/15/95 Letter.

in response to the Sixth Circuit's *Cincinnati Bell* decision, that the court has directed the Commission to immediately eliminate Section 22.903.[56]

28. Opponents of the relief requested by the BOCs generally caution that circumstances have not changed with respect to the BOCs' dominant market position. AT&T argues that while competition has taken hold in many telecommunications services, the BOCs continue to dominate the local exchange market, and can use their control of bottleneck facilities to disadvantage wireless competitors with respect to interconnection.[57] Others argue that the presence of companies such as AT&T and AirTouch in the wireless market does not diminish the need for structural separations. Despite the fact that some of these companies have a nationwide presence in wireless, these commenters contend, they still are new entrants into the local exchange market.[58] Nextel dismisses BellSouth arguments that AT&T, MCI, Sprint, and GTE are competitive threats to BellSouth's ability to provide its customers with "one-stop shopping" because these carriers are not yet providing landline local exchange service within BellSouth's territory.

29. In a set of joint *ex parte* letters concerning the *Cincinnati Bell Order*, AirTouch, Comcast, and Cox argue that the BOCs' requests for relief from structural separations ignore the effects of their continuing and undisputed control over essential bottleneck facilities. They state that the LECs' wireless competitors will need to enter into a series of agreements with the incumbents for such things as mutual exchange of traffic, the location of equipment and the sharing of network functionalities. They argue that LEC ability to control the fate of their competitors makes LECs with CMRS affiliates a special case, and that, as part of the remand proceeding, the Commission must examine the competitive issues raised by in-region cellular and broadband PCS activity by the LECs.[59]

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[56] *See, e.g.*, Bell Atlantic 12/7/95 *Ex Parte*, Attachment; SBC 12/15/95 Letter, Attached *ex parte Presentation* at 1-2; *ex parte Letter* from Ben Almond, BellSouth Corporation dated November 20, 1995 to Mr. William F. Caton, FCC, Re: BellSouth's Request for Resell Authorization, DA 95-1901 and DA 95-1968 (Attaching *Ex Parte* Letters from David Markey of BellSouth to each of the Commissioners, dated November 20, 1995); *Ex Parte* Letter from Charles P. Featherstun, BellSouth Corporation, dated November 29, 1995, Re: FCC action on remand from *BellSouth Corporation v. FCC*, Case Nos. 94-4113, 95-3315, consolidated with *Cincinnati Bell Telephone Co. v. FCC*, Nos. 94-3701/4113, 95-3023/3238/3315 (6th Cir. Nov. 9, 1995).

[57] *See, e.g.*, AT&T Comments at 3-14.

[58] AirLink observes that "[w]hile AT&T may be seeking to use wireless services as a strategy to enter the local exchange market this is merely an *entry* strategy." AirLink Comments at 2-5. *See also* AT&T Comments at 2-6.

[59] *Ex Parte* Letter from Warner K. Hartenberger, Dow, Lohnes and Albertson, on behalf of AirTouch Communications, Inc., Comcast Corporation, and Cox Enterprises, to William E. Kennard, General Counsel, FCC, FCC, dated January 18, 1996 (Airtouch, *et al.*, General Counsel Letter) and attached *Ex Parte* Letter from Brian Kidney, AirTouch Communications, Inc., Joseph S. Wax, Jr., Comcast Corporation, and Alexander V. Netchvolodoff, Cox Enterprises, to the Honorable Reed Hundt, Chairman (Airtouch, *et al.*, Chairman Letter) (jointly, Joint Safeguards *Ex Parte*).

30. In particular, AirTouch, Comcast, and Cox argue that rather than accepting at face value LEC claims of "cost savings" and "efficiencies" of "integrated" LEC wireless activity, the Commission must require LECs to quantify the harm they allege is inherent in retaining or expanding structural separation. They further contend that the success of BOC cellular affiliates demonstrates that structurally separate BOC in-region cellular operators have a firmly established brand name, vibrantly growing customer base and are financially solid. According to AirTouch, Comcast, and Cox, competitors of the LECs will be harmed if structural separation or equally effective nonstructural safeguards are not imposed on LEC in-region wireless activity. They claim that structural separation is one way to address the acknowledged incentive and ability of a LEC to favor its own CMRS operations.[60] In addition, they argue that BOCs, to gain relief from the cellular structural separation requirement, must show that the elimination of the requirement is not harmful despite the persistence of the local exchange bottleneck.[61] Several BOCs filed responses opposing the relief requested in the Joint Safeguards *Ex Parte* letter, with Southwestern advocating immediate elimination of Section 22.903.[62]

C. Interconnection Actions Relevant to Structural Separation

31. As noted above, one of the primary objectives underlying our adoption of structural separations was to prevent interconnection discrimination by BOCs in their relationship with affiliated and unaffiliated cellular carriers. In considering whether to retain structural separation for BOC cellular service, we must take into account whether proposed changes to our existing LEC CMRS interconnection policies either support retention of Section 22.903, or demonstrate its obsolescence. In addition, the 1996 Act contains significant new provisions with respect to interconnection. We briefly review the nature of these pending changes in this section.

32. Current FCC Requirements. The LECs' cellular interconnection obligations were defined in the same order that established the structural separations requirements, as part of a comprehensive regulatory framework. In the *Cellular Order*, the Commission required the BOCs to furnish interconnection to cellular systems upon terms "no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies."[63] In its subsequent *Policy Statement*, the Commission outlined its interconnection

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[60] The Airtouch, *et al.* General Counsel Letter, at 6 and 7, also requests that the Commission defer any action on the PacTel Safeguards Plan pending a general rulemaking inquiry into necessary LEC wireless safeguards, as a result of the remand of the *Cincinnati Bell* case.

[61] Joint Safeguards *Ex Parte* at 4-5.

[62] *See Ex Parte* Letter from Daniel L. Poole, U S West, to William E. Kennard, General Counsel, FCC, dated February 5, 1996; *Ex Parte* Letter from Gina Harrison, Pacific Telesis, to William F. Caton, Acting Secretary, FCC, dated February 9, 1996; *Ex Parte* Letter from Michael W. Bennett, SBC Communications Inc. to Mr. William F. Caton, Acting Secretary, FCC, dated February 14, 1996.

[63] *Cellular Order*, 86 FCC 2d at 496.

standard, which requires all local telephone companies to provide: (1) the type of interconnection the mobile carrier requests; (2) interconnection to the nonwireline carrier that is not less favorable than that furnished to its affiliated wireline cellular carrier; and (3) reasonable interconnection arrangements with the nonwireline carrier that may not be the same as those used by the wireline cellular carrier.[64]

33. This framework for LEC provision of interconnection to cellular licensees was further refined in the *Interconnection Order*,[65] in which the Commission ordered the LECs to engage in good faith negotiation over the terms and conditions of interconnection with cellular carriers.[66] The Commission stated that it expected the agreements to be concluded without delay, noting that a cellular carrier having difficulty obtaining a good faith agreement may file a complaint before the Commission under Section 208 or 312 of the Act. The Commission further determined that the relationship between the landline carrier and the cellular carrier was that of "co-carriers," and therefore the Commission expected the carriers to observe the principal of mutual compensation.[67] In the *CMRS Second Report and Order*, we extended our existing policies with respect to LEC/cellular interconnection to cover LEC interconnection with all CMRS providers.[68]

34. Pending FCC Rule Changes. We have continued to examine LEC/CMRS interconnection issues in recent dockets. On December 15, 1995, we initiated CC Docket No. 95-185 by adopting an NPRM to examine issues relating to compensation for LEC/CMRS interconnection.[69] In the *Interconnection Compensation NPRM*, we found that if the commercial mobile radio services are to compete directly against LEC landline services, it is important that the prices, terms and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition. The *Interconnection Compensation NPRM* further finds that, at least for the near future, there is likely to be an

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[64] *See* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad.Reg.2d (P & F) 1275, 1283-84 (1986) (*Policy Statement*); *citing Cellular Reconsideration Order*, 89 FCC 2d at 81-82; *Cellular Order*, 86 FCC 2d at 495-96. *See also* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 4 FCC Rcd 2369, 2377 n.16 (1989) (*Interconnection Reconsideration Order*), *aff'g Interconnection Order*, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and system designs). *Cf. CMRS Second Report*, 9 FCC Rcd at 1498.

[65] *Interconnection Order*, 2 FCC Rcd at 2913.

[66] *Id.* at 2912-2913, 2916.

[67] *Id.* at 2916.

[68] *CMRS Second Report and Order*, 9 FCC Rcd at 1497-1499; *see also* 47 U.S.C. §§ 201, 332(c)(1)(B).

[69] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 94-54, FCC 95-505 (released Jan, 11, 1996) (*Interconnection Compensation NPRM*).

imbalance in negotiating power between the incumbent LECs and new CMRS providers seeking to enter local markets. Thus, we have recently found that our existing LEC/CMRS interconnection rules and policies are insufficient to protect against discriminatory interconnection practices and rates, and have tentatively concluded that further regulatory oversight and intervention will be needed for some time in the future in order to prevent the LECs from abusing their position of control over interconnection to the public switched telephone network.[70]

35. Interconnection Changes Pursuant to Sections 251 and 252. Section 251 of the 1996 Act imposes extensive interconnection obligations on all telecommunications carriers, and particularly on LECs and incumbent LECs. Section 251(a) imposes a general duty on all telecommunications carriers (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256. The new interconnection obligations in Section 251(b) for LECs govern LEC provision of: resale; number portability; dialing parity; access to rights-of-way; and reciprocal compensation for the transport and termination of traffic originating on another carrier's facilities.[71]

36. Section 251(c) contains additional obligations for incumbent LECs, which include, *inter alia*: (1) good faith negotiation of terms and conditions of agreements to fulfill Section 251(b) and (c) interconnection obligations; (2) provision of interconnection with the LEC's network for transmission and routing of telephone exchange and exchange access service, at any technically feasible point, that is at least equal in quality to that provide by the LEC to itself or any affiliate or other party, on rates, terms and conditions that are just, reasonable and nondiscriminatory; (3) provision of unbundled, nondiscriminatory access to network elements to any requesting telecommunications carrier, at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory; (4) provision of public notice of changes in the information necessary for transmission and routing of services

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[70] In an Order and Supplemental Notice of Proposed Rulemaking released on February 16, 1996, we found that the 1996 Act may have an impact on the *LEC/CMRS Interconnection Compensation* proceeding in CC Docket 95-185, and requested parties to include in their responses to the Notice, commentary on the implications of the 1996 Act on our proposals and topics regarding interconnection between LECs and CMRS providers. Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Order and Supplemental Notice of Proposed Rulemaking, CC Docket No. 94-54, FCC 96-61, released Feb. 16, 1996.

[71] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (rel. Apr. 19, 1996) (*Local Competition Notice*). The *Local Competition Notice* sought comment on how best to establish a competitive, yet deregulatory, national framework for network interconnection pursuant to Sections 251 and 252 of the 1996 Act. 47 U.S.C. §§ 251, 252. The Commission adopted a report and order in this proceeding on August 1, 1996. *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, News Report No. DC 96-75 (released Aug. 1, 1996).

using the LEC's network or of changes that would affect interoperabililty; and (5) the duty to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the LEC, on reasonable and nondiscriminatory rates, terms and conditions, unless the LEC demonstrates to the State commission that physical collocation is not practical due to technical reasons or space limitations, in which case the LEC may provide virtual collocation. Section 252 contains procedures for negotiation, arbitration, and approval of agreements, and gives the States authority to resolve interconnection disputes arising under Sections 251 and 252. In addition, pursuant to new Section 252(i), a LEC must make available to any requesting carrier, on the same terms and conditions, any interconnection, service, or network element provided under an approved agreement to which it is a party.[72]

D. Analysis of Continued Need for Section 22.903

1. Background

37. The question remanded by the Sixth Circuit is whether the structural separation requirements of Section 22.903 continue to serve as a "necessary regulatory restriction" on the Bell operating companies,[73] or, whether changed circumstances, regulatory or otherwise, have either obviated the need for such restrictions, or rendered them contrary to the public interest. This Commission has repeatedly grappled with the question of traditional structural versus nonstructural safeguards in the contexts of LEC landline enhanced, CPE, and wireless services. Although the results have varied over time, our fundamental approach and analysis of the question has remained consistent. The restrictions on the Bell companies in Section 22.903 were imposed, as a general matter, in recognition of their dominant market position in the local and exchange access markets, to prevent them from leveraging their dominance into the newly created cellular service markets. The structural separation requirements were specifically intended to protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service, and to prevent discriminatory interconnection practices with respect to the non-wireline cellular provider by requiring that the wireline and non-wireline entities exist independently from one another with respect to facilities, operations, management and other personnel. With respect to both cross-subsidization and interconnection, structural separation was believed to permit easier detection and disclosure of improper activities, and to reduce unnecessary regulatory intrusion into competitive or unregulated operations.

38. We have also recognized that structural separation entails costs to the carriers, in the form of lost efficiencies of scope and added costs of establishing separate facilities, operations, and personnel, as well as lost opportunities for customers to obtain integrated and

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[72] *See* 47 U.S.C. §§ 252, 252.

[73] *See Cincinnati Bell*, 69 F.3d at 767-68.

innovative service packages.[74] In the case of CPE and enhanced services, the Commission recognized costs to small business and residential customers because the BOCs, which already had existing marketing contacts with households in their service regions, could not inform them of new and desirable enhanced service offerings, such as voice messaging, through existing marketing contacts. The result, in many cases, was that such customers would never learn of the availability of such desired offerings at all. Thus, in the *Computer III* proceedings, the public benefit of dissemination of advanced telephone offerings that has been the product of joint marketing of basic and enhanced services and CPE was found to outweigh the costs to competition of integrated BOC offerings, if such integrated services were provided pursuant to appropriate nonstructural safeguards.[75]

39. The BOCs claim that we have previously recognized the value of integrated offering with respect to enhanced services, CPE and PCS, and argue that the same rationale should apply to their provision of cellular service. Their competitors, on the other hand, have claimed that the benefits of service integration for the customers, and the cost savings to the BOCs, are vastly outweighed by the costs to competition that integrated operations would present. Although the *Broadband PCS* orders referred to the economies of scope arising from the use of "wireless loops" and "wireless tails,"[76] the Commission made no specific findings about the public benefits of integrated operations or joint marketing of BOC cellular and landline services. Nor did it undertake the task of reviewing the nonstructural safeguards developed for the BOCs' provision of integrated local exchange and enhanced services and CPE to determine their suitability for application to the LEC provision of CMRS. In contrast to the *Computer III* proceeding in which nondiscriminatory network interconnection safeguards were a prominent feature of the nonstructural safeguard plan,[77] the only nonstructural safeguards specifically addressed in the *Broadband PCS* proceeding were the cost accounting and allocation rules contained in Parts 32 and 64 of the Commission's rules. Thus, the nature of the nonstructural safeguards, other than the accounting rules, that might be applied in lieu of structural separations to LEC-provided CMRS has never been squarely addressed by this Commission, and we begin the process of doing so in this Notice, as part of our examination of the issues remanded by the Sixth Circuit in the *Cincinnati Bell* decision.

2. Discussion

40. We observe that, in light of the many separate affiliate requirements in the 1996 Act, it is evident that Congress has concluded as a general matter that such requirements, together with associated nondiscrimination safeguards, constitute an appropriate initial

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[74] *See, e.g., Cellular Reconsideration Order*, 89 FCC 2d at 77-80.

[75] *See, e.g., BOC Safeguards Order*, 6 FCC Rcd at 7622.

[76] *See, e.g., Broadband PCS Notice*, 7 FCC Rcd at 5707; *Broadband PCS Order*, 8 FCC Rcd at 7747-52.

[77] *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer III*), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Computer III* Phase I Order) (subsequent history omitted).

safeguard for BOC entry into the provision of certain competitive services, which can be phased out as markets become more competitive. At the same time, we note that the BOCs have been subject to structural separation requirements for their cellular operations since their inception, and that the BOCs are generally incumbents in CMRS markets, facing market entry by PCS competitors. In this Notice, we explore varying approaches to separate affiliate and nondiscrimination safeguards for BOC cellular operations, while proposing to give full expression to Congressional intent regarding joint marketing, customer proprietary information and network information disclosure requirements.

41. At the outset, we think it important to define the terms that we utilize in this analysis. By "structural separation," we mean the kind of requirements that are spelled out in Section 22.903 and in our *Computer II* decisions. We define "separate affiliate" requirements more generally, so as to include structural separation, but also to encompass less restrictive provisions that relate to corporate structure without necessarily including requirements for separate officers, separate personnel, and arm's-length transactions. We thus propose, in later sections of this Notice, limited, "non-structural" separate affiliate requirements which do not entail all aspects of structural separation.

42. We find that although there have been vast changes in the nature of the wireless market since the 1981 imposition of our BOC cellular structural separation requirement, the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable, and is likely to remain so until the sweeping market entry and interconnection changes authorized by the 1996 Act have taken hold. We note that the interconnection provisions of the 1996 Act, designed to facilitate entry into the local exchange market, have only recently been legislated and will not be implemented for at least several months. The BOCs thus currently retain market power in the local exchange market, and therefore control over public switched network interconnection, within their in-region states. We seek comment as to whether in-region application of separate affiliate and nondiscrimination requirements would continue to serve as an important regulatory check on the BOCs' market power in local exchange.[78] In the following paragraphs, we examine each of the traditional bases for our cellular structural separation requirement in light of today's telecommunications market and regulatory framework, and also examine the overall relative merits of structural versus non-structural safeguards.

43. Interconnection. Prevention of interconnection discrimination was, as we have discussed above, one of the central justifications for imposing structural separation. The insufficiency of our existing interconnection safeguards to protect against CMRS interconnection pricing discrimination has been extensively discussed in the *LEC/CMRS Interconnection Compensation NPRM*. We also note that these existing LEC/CMRS interconnection requirements grew from the initial requirement that LECs (at that time, primarily the AT&T Bell operating companies) offer the nonwireline cellular carrier

[78] We discuss the separate, but related, questions of regulatory symmetry among LEC providers of cellular service in greater detail in Section V and LEC PCS/cellular symmetry in Section VI, below.

interconnection arrangements no less favorable than those offered to their wireline affiliates, and this obligation was established in the same order creating the cellular structural separation requirement.[79] A separate cellular affiliate provides a template by which to measure the rates, terms and conditions of these entities' interconnection agreements with their affiliated LECs. The effective enforcement of nondiscrimination rules depends on the visibility of the transactions under scrutiny. Such visibility does not depend on structural separation *per se*, however, but could be achieved through a more limited separate affiliate requirement, including one that permitted integrated management with affiliates providing landline services. We believe that it will be particularly crucial to retain some form of separate affiliate requirement, either structural or non-structural, as the new CMRS entrants begin to negotiate their interconnection arrangements with the incumbent BOCs.[80] We seek comment on our analysis.

44. Price Discrimination. Another aspect of the problem alleged by BOC CMRS competitors is that integrated operations present opportunities for pricing discrimination.[81] Competitors have essentially complained that, absent separation of these activities into two corporate structures, any "charge" that a local exchange carrier places on services or facilities provided to wireless operations would be merely a bookkeeping entry, subject to the cost allocation requirements of Section 64.901 of our rules.[82] In order to determine whether such carriers were pursuing a nondiscriminatory pricing policy, competitors and this Commission would be required to compare these cost allocations with actual charges levied on non-affiliated competitors, which they maintain would be a problematic comparison, especially where allocations of joint and common costs are concerned. We are concerned that the possibility of discrimination by a BOC or incumbent LEC in favor of its own cellular operations and against other CMRS providers could be increased absent some form of separate subsidiary requirement, either structural or non-structural, and that our tasks of detecting such discrimination and determining whether it is reasonable or unreasonable would be greatly complicated. We seek comment on the value of separate affiliates in detecting and deterring pricing discrimination, and whether the degree of separation (*i.e.*, structural versus non-structural) has any effect on the value of this safeguard.

45. Cross-subsidization. With respect to the other historical basis for the structural separation requirement, the BOCs have argued that the possibilities of cross-subsidization have greatly declined in number and scope since the early 1980s, so that cross-subsidization no longer serves as a rationale for keeping the structural separation requirement of Section 22.903. They claim that they have neither the incentive nor the opportunity to cross-subsidize

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[79] *Cellular Order*, 86 FCC 2d at 493-95.

[80] For similar reasons, we propose to require all Tier 1 LECs to provide their cellular, PCS and, potentially, SMR services through non-structurally separated affiliates, as discussed in Section VI, below.

[81] *See BOC Separation Order*, 95 FCC 2d at 1129.

[82] Section 64.901, 47 C.F.R. § 64.901.

cellular service. In contrast, their competitors have argued that none of the changes in accounting rules, reporting requirements, audit schedules or the adoption of the price cap form of rate regulation, cited by the BOCs, can replace the protections against cross-subsidy offered by Section 22.903. In addition, they maintain that cross-subsidization through misallocation or misassignment of costs is still possible, and that the detection of landline to cellular cross-subsidization is made more difficult by the fact that cellular rates are no longer subject to tariff.[83]

46. In the *Computer II* and *BOC Separation Orders*, the Commission observed that structural separation and cost accounting rules are two complementary parts of a single regulatory regime.[84] Our subsequent *Joint Cost Order*, and the rules and regulations adopted thereunder, impose significant additional new cost allocation and affiliate transaction rules on the LECs, that were specifically designed to prevent cost-shifting in an environment of LEC provision of integrated regulated and unregulated services.[85] Our *Joint Cost Order*, affiliate transaction and Part 64 cost allocation rules, together with our price cap regime for tariffed LEC interstate services go far in reducing the possibility of undetected cost-shifting among the LEC interstate services. Nonetheless, some commenters continue to argue that cross-subsidization is possible even under a price cap regime, for those services that are either not subject to a "pure price cap" option, or continue to be regulated under a rate-of-return system at the intrastate level. Presumably, the cost-shifting these parties are concerned with would occur between the as-yet primarily intrastate competitive cellular service and the intrastate as-yet primarily monopoly local exchange service.[86] We seek further comment on these issues, and urge the parties alleging continued cross-subsidy problems under price caps to provide specific data and argumentation in support of their claims and to address the relative value of structural and non-structural separate affiliate requirements in this regard.

47. Leveraging of Market Power. One concern with respect to integrated landline and cellular operations has been the incentives and opportunities such a corporate structure

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[83] *See* Comments on Cross-Subsidy Issues in Appendix A and Comments on Cross-Subsidization in Appendix B.

[84] *BOC Separation Order*, 95 FCC 2d at 1129; *Computer II*, 77 FCC 2d at 463-64.

[85] Separation of Costs and Regulated Telephone Service from Costs of Nonregulated Activities & Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *recon*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corporation v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). The *Joint Cost Order* adopted (1) cost allocation standards and, for LECs with annual operating revenues of $100 million or more, the requirement that a cost allocation manual (CAM) be filed with the Commission, with entries subject to public comment and Commission review; (2) rules for recording transactions between regulated telephone companies and their corporate affiliates; and (3) accounting procedures, audit requirements, and other implementation and enforcement mechanisms. *See* Parts 64 and 32.

[86] *See* comment summaries in Appendix A.

provides for leveraging of the LEC's local exchange market power into the more competitive cellular and, more generally, CMRS market. Because structural separation requirements have been in place for BOC cellular service since its inception, we cannot determine how differently the market would have developed absent these safeguards. We note that, during the period that structural separation has been in place, the market shares in each cellular service area have been divided on a roughly equal basis between wireline and nonwireline carriers.[87] While this indicates that, within the parameters of a duopoly market structure, some degree of competition has developed, it provides no evidence of the specific role of structural separation in promoting such competition. The question before us is whether continued requirements for separate officers, separate books of account, separate facilities and separate personnel in Section 22.903 for BOC cellular operations would have a beneficial effect for increased competition with the advent of PCS.

48. On the record before us at this time, we are not able to determine whether our current requirements or some lesser degree of separation is warranted for BOC cellular service during this period of transition to more competitive telecommunications markets. In the case of BOC cellular service without structural separation, the incumbent LEC could be integrated with its cellular affiliate, and therefore could realize efficiencies through integrated management and operations that have previously been denied. In a competitive environment, such efficiencies could promote higher-quality, lower-cost service to subscribers. On the other hand, a BOC which integrated a well-established incumbent wireless provider into its landline management and operations could possess incentives and opportunities to favor its own wireless operations while at the same time providing essential services and facilities to its cellular system's potential competitors. We are concerned about the potential for abuses in provisioning, installation, maintenance and customer network design that might not be addressed adequately by the uniform nonstructural safeguards that we propose for LEC provision of CMRS, at least during the transitional period before implementation of the 1996 Act's interconnection and network unbundling provisions.

49. We have acknowledged that broadband PCS is widely expected to provide "major new competition for cellular systems,"[88] as well as potential local loop competition.[89] Thus, because PCS is likely to be competitive with both landline local exchange and incumbent cellular service, an integrated double incumbency (BOC cellular and local exchange operations) would appear to increase the incentives and the opportunities of the BOC to act in an anticompetitive manner. Structural separation, if continued on an interim basis, could prevent, for example, the BOC from tasking a single set of officers and personnel with the

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[87] *See*, generally, *CMRS First Annual Report*, 10 FCC Rcd 8844; J. Berresford, Mergers in Mobile Telecommunications Services; A Primer on the Analysis of Their Competitive Effects, 48 Fed. Comm. L.J., 248, 256 (1996).

[88] *See CMRS First Annual Report*, 10 FCC Rcd at 8865 n. 128, 8867, *citing Broadband PCS Order*, 8 FCC Rcd at 7715.

[89] *See, e.g., Broadband PCS Notice*, 7 FCC Rcd at 5705-06; *CMRS Flexibility Notice* at paras. 10-18.

interconnection arrangements for its cellular unit's PCS competitor as well as dealings with that competitor's major customers to provide local exchange service, or cellular service, or both. The nonstructural safeguards we propose below in Section VI would not prevent such sharing of personnel and integrated management decisionmaking. We seek comment on whether such integrated operations would present realistic opportunities for anticompetitive conduct and, if so, whether safeguards less restrictive than our current structural separation rules would sufficiently constrain such conduct.

50. Costs and Benefits of Integrated Versus Structurally Separated Operations. Whatever the benefits of structural separation to BOC competitors, these requirements also place costs on the BOCs that are not borne by any other CMRS market participants. We next address the balance of costs and benefits arising from our current structural separation requirements.

51. The BOCs have sought relief from Section 22.903, both through individual waiver petitions and requests that the rule be eliminated, primarily so that they could benefit from the cost efficiencies of integrated operations, and so that their customers could benefit from "one-stop-shopping," *i.e.*, a single point of contact for all service, repair and billing needs. We recognized similar benefits in declining to adopt structural separation for LEC provision of PCS. We note, however, that that decision was in the context of a discussion of the goal of promoting a set of then-undeveloped new services where the cellular structural safeguards were to be retained and restrictions placed on cellular-PCS cross-ownership.[90] We also recognize that "one-stop-shopping" may, from the customer standpoint, constitute a valuable benefit. This point is substantially addressed by Section 601(d) of the 1996 Act, which confers upon BOCs, and other companies, the right to market jointly and sell certain landline services together with CMRS. Thus, Section 601(d) appears to have removed one of the principal "costs" to the BOCs of continued compliance with Section 22.903 of our rules. Section 601(d) increases the flexibility afforded the BOCs to meet customer demands without necessarily eliminating the remainder of the structural separation requirement. We seek comment on this analysis.

52. We also seek data on the relative benefit of integrated operations other than those relating to joint marketing. Although the BOCs have alleged that there are cost savings to be realized from integrated operations, they have not presented a quantification of either the magnitude of these overall benefits, or the costs to the BOCs to continue to maintain structurally separate corporate affiliates for cellular service. We believe that this data is essential to final evaluation of the benefits of integrated versus separated operations, and urge the parties to include such data in their comments. We therefore seek comment on specific public benefits from integrated cellular\landline operations that structural separation precludes. Parties submitting comments should provide specific instances of savings, economies of scale and/or scope, or other consumer benefits that they contend would be impossible without integrated operations. We are cognizant of the fact that many carriers may already have plans

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[90] *Broadband PCS Order*, 8 FCC Rcd at 7748 & n.98.

underway for more integrated uses of landline and wireless capabilities. Therefore, we are particularly interested in receiving information and comment on the effect on our cost-benefit analysis of our recent initiatives seeking to introduce greater flexibility for CMRS licensees' use of their spectrum.[91]

E. Proposed Revisions to Section 22.903; Immediate Relief; and Implementation of Section 601(d), Section 702 and Section 251(c)(5) of the 1996 Act

53. Regardless whether we determine that the core structural separation requirements in Section 22.903 should be eliminated without delay or after some period of transition, we believe that certain aspects of the restrictions under which BOC separate cellular affiliates must operate have, over time, either become obsolete, or should be narrowed. If we retain some form of structural separation, it is our intention that the rule continue to serve the public interest by not unduly limiting the business operations of the BOCs. Therefore, we tentatively conclude that, at a minimum, certain aspects of Section 22.903 may be safely relaxed to permit the BOCs increased flexibility in meeting customer needs, while at the same time protecting BOC ratepayers and wireless competitors. We discuss in a subsequent section whether Section 22.903 should be replaced in its entirety by the uniform set of safeguards we propose to apply generally to LEC provision of CMRS.

1. Limitation of Section 22.903 to In-Region BOC Cellular Services

54. In the *SBMS Waiver Order*, we concluded that the out-of-region provision of integrated competitive landline local exchange and cellular service by a single, structurally separate BOC subsidiary, SBMS, was in the public interest because it would promote local loop competition, without raising the types of competitive concerns that would be raised by in-region integrated landline and wireless services.[92] The 1996 Act also distinguishes between the competitive risks posed by in-region versus out-of-region BOC entry into interLATA markets. Section 271(b)(2) generally permits a BOC, or any affiliate of that BOC, to provide interLATA services originating outside its "in-region" states immediately after the date of enactment of the 1996 Act. On the other hand, BOC provision of interLATA service originating, in-region is generally conditioned on compliance with the new interconnection obligations, the presence of a facilities-based competitor, or failure of one to request interconnection, and the satisfaction of a "competitive checklist."[93] Moreover, in-region

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[91] *See, e.g.*, Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rulemaking, FCC 96-17, 61 Fed. Reg. 6189 (Feb. 16, 1996) (*CMRS Flexibility NPRM*) (initiated a rulemaking proceeding intended to permit flexible service offerings in the commercial mobile radio services by permitting CMRS providers to offer fixed services, such as fixed wireless local loop, on a co-primary basis under their mobile licenses).

[92] *SBMS Waiver Order* at para. 20.

[93] *See* Section 271(b)(1) and (c), 47 U.S.C. § 271(b)(1) and (c).

originating interLATA services may only be provided by the BOC through a separate affiliate as specified in Section 272.[94]

55. We continue to believe, consistent, with the *SBMS Waiver Order*, that for out-of-region combined service offerings, the costs to the carrier of establishing a subsidiary in addition to their structurally separate cellular subsidiary to provide integrated competitive landline local exchange (CLLE) and cellular services outweigh any possible benefits to the public of such fragmented operations. We also believe that additional relief is warranted for BOC provision of out-of-region cellular service, and tentatively conclude that Section 22.903 should be limited in scope to in-region services of the BOC and its cellular operations, or, in the case of a joint venture between two or more BOCs, the in-region services of all of the joint venture participants together.[95] Thus, for out-of-region cellular services, BOCs would be free to provide service directly, if they so desired. We tentatively conclude that such relief would promote local exchange competition in those areas in which the affiliated LEC is not the incumbent local exchange provider. We seek comment on these tentative conclusions.

2. Interim Relief for Out-of-region Operations

56. Following issuance of the *SBMS Waiver Order*, waiver petitions were filed by U S West and Bell Atlantic seeking identical relief for out-of-region activities. No comments or oppositions were filed in response to these petitions. In this Notice, we take action that goes beyond the relief granted SBMS, and eliminates any out-of-region effect of Section 22.903, as part of our effort to narrowly tailor its restrictions to reach only the relationship between the incumbent BOC and its cellular subsidiary in the incumbent's in-region service area. As we explain above, this approach is consistent with the 1996 Act's treatment of in-region versus out-of-region BOC entry into new, or previously constrained, service.[96]

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[94] *See* 47 U.S.C. § 272.

[95] For example, in the case of Bell Atlantic NYNEX Mobile (BANM), Section 22.903 would continue to apply to the provision of cellular services in the in-region geographic exchange areas served by the two landline carriers, Bell Atlantic and NYNEX, but would cease to apply to cellular services provided by BANM in out-of-region local exchange service areas not served by either Bell Atlantic or NYNEX.

[96] Section 271(b) of the 1996 Act authorized the BOCs to begin to provide interLATA services originating outside of their in-region areas immediately. 47 U.S.C. § 271(b). In response, we recently adopted, as an interim measure, non-dominant carrier regulation for BOC provision of interstate, interexchange services originating outside of their in-region states if such services were provided through an affiliate that complied with our *Competitive Carrier* rules. *See* Bell Operating Company Provision of Out-of-Region, Interstate, Interexchange Services, *Report and Order*, CC Docket No. 96-21, FCC 96-21 (released July 1, 1996) (*BOC Out-of-Region Order*) at paras. 15-25. We believe that our treatment of BOC out-of-region cellular services here, which does not call for compliance with any separate affiliate requirement, can nevertheless be reconciled with the proposals made in the *BOC Out-of-Region Order* and is justified by the differing natures of the services and markets at issue. The BOCs have only now begun to enter the interLATA markets outside of their local exchange service areas. The relationship of these new operations to the BOCs' in-region local exchange activities is yet to be made clear. We note that interexchange carriers, including competitors with the BOCs' new out-of-region operations, are customers of the BOCs' in-region access services, which include both

57. Although this relief goes beyond the scope of the *SBMS Waiver Order*, we conclude, in light of the record accumulated to date in the various BOC waiver proceedings, and for the reasons stated in the *SBMS Waiver Order*, that the public interest would be served by granting the BOCs interim relief from the out-of-region reach of our existing Section 22.903 requirements. We conclude that immediate out-of-region relief from Section 22.903 will benefit consumers by promoting competition in those areas in which the BOC cellular operation is not affiliated with the incumbent LEC by permitting the BOCs to structure their out-of-region offerings to suit their business judgment. We further conclude that the BOCs may exercise this degree of flexibility in provisioning their out-of-region cellular services without undermining the core protections of the rule for either the BOCs' in-region local exchange ratepayers, or their cellular competitors. With respect to in-region services, the competitive threat arises primarily from the need of the non-affiliated cellular carrier to interconnect to the public switched network through its competitor's landline corporate affiliate. This crucial relationship does not obtain out-of-region. Pursuant to Sections 1.3 and 22.19 of our rules, the Commission may grant a waiver upon its own motion, for good cause shown.[97] We are hereby granting to all BOCs a waiver of the requirements of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas. This action also has the effect of granting the individual waiver petitions filed by U S West and Bell Atlantic.[98]

3. Ownership of Landline Facilities

58. Section 22.903(a) prohibits, *inter alia*, BOC separate cellular affiliates from owning "any facilities for the provision of landline service." In its waiver petition, Ameritech expressly sought relief from this provision so that its in-region, but structurally separate

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originating and terminating access. A less-regulatory approach is justified for out-of-region wireless activities; cellular calls seldom entail operations both outside and inside a BOC's exchange access service area, and unaffiliated, out-of-region cellular carriers normally have no need for access to BOCs' in-region local exchange facilities, with the limited exceptions of cellular long distance and roaming. (We have initiated a proceeding to address, *inter alia*, the regulation of roaming arrangements. *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, FCC 96- XXX, *Report and Order and Third Notice of Proposed Rulemaking*, (released July __, 1996).) Commenters are free to address our analysis of these market and service relationships.

[97] *See* Sections 1.3 and 22.19, 47 C.F.R. §§ 1.3, 22.19. Section 1.3 provides, *inter alia*, that "[a]ny provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown." Section 22.19(a) provides that waivers may be granted by the Commission on its own motion, and that waivers will not be granted except upon an affirmative showing: "(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or (ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest . . . ."

[98] *See* paragraph [149] *infra*.

affiliate, ACI, could own landline facilities for the provision of competitive landline local exchange and long distance services and resell cellular service on an integrated basis.[99]

59. We propose to amend the portion of Section 22.903(a) prohibiting the cellular affiliate from owning any facilities for the provision of landline service to permit a BOC cellular affiliate to own landline facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange service, in the same market with the affiliated incumbent LEC. Thus, the rule would be modified only to prohibit the cellular affiliate from owning -- including jointly owning with the incumbent affiliated LEC --landline facilities that the latter uses in the provision of landline local exchange services. We believe that retention of this prohibition is appropriate for the same reasons that we propose to include a limited separate affiliate requirement in our proposed uniform LEC/CMRS safeguards *infra*, *i.e.*, to distinguish clearly between charges applied to all interconnectors and joint cost allocations resulting from integrated operations. We believe that such relief would benefit the public by enabling a new entrant to the local exchange market, such as ACI, to provide a package of services without the risk of LEC monopoly cross-subsidization or interconnection discrimination.[100] We seek comment on this proposal.

4. BOC CMRS Joint Marketing and Resale; Section 222 CPNI Requirements; and Section 251(c)(5) Network Information Disclosure Obligations

60. In this section, we explore changes to Section 22.903 to reflect the new landline/CMRS joint marketing and sale authority, and related changes with respect to CPNI and network information disclosure consistent with Sections 601(d), 702 and 251(c)(5) of the 1996 Act.[101]

(a) Joint Marketing and Promotion

61. Section 601(d). The 1996 Act expressly permits a BOC to market jointly and sell CMRS in conjunction with several types of landline service in Section 601(d).[102] Section 601(d) states: "Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA

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[99] Ameritech Waiver Petition at 8.

[100] Because we do not propose immediate modification of Section 22.903 with respect to the cellular subsidiaries' ownership of landline facilities, or, as discussed below, with respect to the manner in which joint marketing and sale of cellular and landline services may occur, ACI's waiver petition is not rendered moot and will be addressed in a separate order.

[101] *See* 47 U.S.C. 521(d), 222 and 251(c)(5).

[102] 47 U.S.C. § 521(d).

telecommunications service, interLATA telecommunications service, and information services."[103]

62. In its February 14, 1996 *ex parte* letter, AirTouch asserts that Section 601(d) allows LECs to market jointly CMRS and landline services, but contains no language prohibiting structural separation of CMRS provided by a LEC. AirTouch observes that when this section was proposed in the House, its sponsor specifically affirmed that the section does not lift the FCC's prohibition against the Bell operating telephone companies providing cellular and landline services on an integrated basis. Finally, AirTouch maintains, Section 601(d) is not self-executing, and that the Commission should determine the definition of joint marketing, and decide how it is to be implemented.

63. Discussion. The legislative history indicates that Section 601(d) was added to the 1996 Act specifically to provide all BOCs, and, by its text, "any other company,"[104] with the same relief from Section 22.903 that BellSouth sought in its September 25, 1995 Resale Authorization Request, discussed in Section IV, above. That is, it permits the landline LEC affiliate to market jointly and sell, or more specifically, to resell, the cellular service of its separate cellular subsidiary. We tentatively conclude that the provision does not necessarily

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[103] The Joint Explanatory Statement of the Committee of the Conference contains no reference to, nor explanation of, the purpose or scope of Section 601(d). The House of Representatives floor debate, however, contains the statement of Representative Burr on the purpose behind the introduction of the "Manager's Amendment" containing the addition of Section 601(d) to proposed H.R. 1555. *See* Cong. Rec. H8456 (daily ed. August 4, 1995) (statement of Rep. Burr). We reference the statement purely for purposes of illumination. The statement of Rep. Burr indicates that Section 601(d) was "designed to permit the Bell operating telephone companies to resell the cellular services of their cellular affiliates." In addition, Rep. Burr states:

> As with my original amendment, the primary goal of the new language is to provide the Bell operating telephone companies with sufficient relief from existing FCC rules to permit them to offer one-stop-shopping of local exchange services and cellular services. Currently, FCC rules not only prohibit those operating companies from physically providing cellular services -- that is, from owning the towers, transmitters, and switches that make up cellular services -- but also from marketing cellular services -- that is, selling cellular services. This amendment does not lift the FCC's prohibition against the Bell operating telephone companies providing the cellular services; it merely permits them to jointly market or resell their cellular affiliate's cellular services along with their local exchange services.

Two sections are cross-referenced in Section 601(d), Section 271(e)(1) sets forth limitations on joint marketing of local and long distance services by certain large national telecommunications carriers seeking to provide competitive local exchange service in a BOC's service area until that BOC is authorized pursuant to Section 271(d) to provide in-region interLATA services. Section 272 describes structural and transactional requirements for BOC provision of certain services, including inregion interLATA service, through separate corporate affiliates.

[104] The floor statement quoted above also indicates that an additional purpose of the amendment was to relieve AT&T of the restrictions on joint marketing and sale contained in the McCaw Consent Decree. *Id.*

require the elimination of the remainder of our current structural separation requirements. As support for this conclusion, we note that the authority to engage in joint marketing and sale of landline and CMRS services is expressly made subject to the provisions of Section 272, which include separate affiliate requirements. We tentatively conclude that the competitive concerns raised in response to the BellSouth Request are relevant to our regulatory response to this new statutory authority, and that we should take these into account in determining how this statutory provision affects the other provisions of Section 22.903 other than subsection (e). While the language and statutory history of Section 601(d) of the 1996 Act indicate that the provision is self-executing and thus Section 22.903(e) is now a nullity, we believe that we retain authority and responsibility to determine the scope of this statutory provision, the definition of joint marketing intended, and the rules to define the relationship between the affiliated entities engaged in such joint marketing. We seek comments on our interpretation of the effect of Section 601(d).

64. Consistent with our interpretation of the intent behind Section 601(d), we propose to define "joint marketing" as referenced in that provision as the advertising, promotion, and sale, at a single point of contact, of the CMRS, telephone exchange service, exchange access, intraLATA and interLATA telecommunications, and information services provided by the BOC. Such joint marketing also includes, but is not limited to, activities such as promotion, advertising and in-bound service marketing. We further tentatively conclude that, at a minimum, new Section 601(d) restores the ability of the BOCs to engage in the joint sale or promotion of cellular and landline service.[105] In addition, Section 601(d) expressly cross-references Section 271(e)(1)[106] and 272 of the 1996 Act.[107] Section 272(f)(3) preserves the authority of the Commission to implement safeguards consistent with the public interest, convenience and necessity. We tentatively conclude that the public interest in preventing, and permitting easy detection of, cross-subsidization requires that such joint marketing be done on behalf of the separate affiliate, subject to our affiliate transaction rules and classified as a non-regulated activity, on a compensatory, arms-length basis. This is not only consistent with the original requirements of Section 22.901, but is also consistent with new Section 272(b)(5)'s requirement that the new BOC separate affiliate required under the 1996 Act "shall conduct all transactions with the BOC of which it is an affiliate on an arm's length basis, with any such transaction reduced to writing and available for public inspection."[108] We seek comment on these tentative conclusions, and whether we should impose a requirement similar to that of Section 272(b)(5) of the 1996 Act, requiring that all transactions be reduced to writing and made available for public inspection.

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[105] This is the same ability that the BOCs had under the pre-Part 22 Rewrite version of Section 22.901(d)(1) of our rules, that is, the ability to engage in the joint sale or promotion of cellular services on behalf of the cellular affiliate "on a compensatory, arms-length basis." Section 901(d)(1); 47 C.F.R. § 22.901(d)(1) (1994).

[106] That provision governs the joint marketing of local and long distance services.

[107] *See* 47 U.S.C. §§ 271(e)(1), 272.

[108] 47 U.S.C. § 272(b)(5).

(b) Direct Sale of CMRS and Landline Services

65. The Wireless Telecommunications Bureau has previously determined that a reseller of cellular service is engaged in the "provision of cellular service" for purposes of Section 22.903.[109] In light of our tentative conclusions regarding the general meaning and scope of the authority conferred on the BOCs by Section 601(d), we find it necessary to address the question of what additional rules, if any, are required by the addition of this resale authority. We include here a summary of responses to the BellSouth Resale Request, to the extent that issues related to such authority were raised.

66. Positions of the Parties. BellSouth, in its Resale Request, argues that structurally unseparated resale presents no danger of cross-subsidy, and that existing accounting safeguards are sufficient to deter any possible cross-subsidization of cellular resale by its local exchange ratepayers. It further maintains that increasingly, Bell Companies have no meaningful source of "monopoly" funds from which to subsidize cellular service.[110] Several parties responding to the BellSouth Resale Request raised cross-subsidization concerns specifically presented by the integrated or "direct" provision of resold cellular and incumbent landline local exchange service, despite the existence of nonstructural accounting safeguards, price caps, and other related requirements.[111]

67. Discussion. Integrated sales and marketing of resold cellular and incumbent LEC landline local exchange service are clearly permitted under Section 601(d).[112] The difficult question before us is how to implement this provision in a manner consistent with the public interest and our goal to promote a vibrant, competitive commercial mobile services and local exchange marketplace. The positions of the parties with respect to the withdrawn BellSouth Request highlight the concerns of competitors, and should be taken into account as we move to implement this provision. We seek comment on whether we should impose conditions implementing the resale authority under Section 601(d) of the 1996 Act, and if so, what these conditions should be. For example, to prevent discriminatory resale practices, should we prohibit "one-of-a-kind" volume discounts for cellular service sold by the cellular affiliate to the affiliated telephone company for resale to the end user, as suggested in the record in response to the BellSouth Resale Request? Such unique discounts could offer per-unit airtime rates lower than those available to other resellers, as a practical matter, based on the affiliated telephone company's willingness to pay high guaranteed minimums to its affiliated joint marketing partner in exchange for volume commitments that might be unreasonable for a non-affiliated reseller. In addition, we seek comment on whether we should mandate public

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[109] BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., Petition for Declaratory Ruling, Order, DA 95-1401 (Wir.Tel. Bur. 1995) at para. 8.

[110] BellSouth Resale Request at 7-9.

[111] These comments are summarized in the cross-subsidization section of Appendix A.

[112] Telecommunications Act of 1996 § 601(d).

disclosure of rates, terms and conditions of service in cases where the LEC is reselling its cellular affiliate's service. In the alternative, we seek comment on whether the general proscription against unjust or unreasonable discrimination in Section 202(a) of the Communications Act and the formal complaint process are sufficient deterrents to discriminatory resale practices.

68. In addition, we seek comment as to how implementation of Section 601(d) should affect potentially related joint marketing and sale activities that are currently prohibited under Section 22.903, such as joint installation, maintenance, and repair of BOC cellular and landline local exchange services.[113] We also seek comment on the effect of the joint marketing authorization on activities such as billing and collection. We note that joint billing was initially proscribed in the *BOC Separation Order* on the grounds that the costs of providing billing services "cannot be properly allocated between unregulated and regulated operations" and because of concerns over access to CPNI.[114] Our subsequent adoption of joint cost and CPNI rules rendered these concerns moot. Moreover, in the *Billing and Collection Order*,[115] we found that a separate subsidiary requirement applicable to the detariffed provision by local exchange carriers of billing and collection services was not warranted.[116] We tentatively conclude that our reasoning in the *Billing and Collection Order* remains valid in the BOC cellular context and that the core structural separation requirements need not be expanded so as to proscribe joint billing. We find that the proper application of the requirement in Section 22.903 for separate books of account would appropriately place joint billing within the category of affiliate transactions, and that our Part 64 rules as they apply to such affiliate transactions adequately address any concern over improper cross-shifting through joint billing. We seek comment on these tentative conclusions. We address matters related to CPNI below in the context of the recent legislation affecting those matters.

(c) Privacy of Customer Information; CPNI Requirements

69. The new BOC authority to market jointly and sell CMRS together with landline services under Section 601(d) raises an issue with respect to the operation of our rules on use

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[113] *See Ex Parte* Letter from Richard M. Firestone, on behalf of SBC Communications, Inc. to Mr. William Caton, Acting Secretary, FCC, dated February 15, 1996, Re: *Ex Parte* Submission GEN. Docket No. 90-314, attaching *Ex Parte* Letter from Richard M. Firestone, on behalf of SBC Communications, Inc. to Barbara Esbin, Esq., Special Counsel for Competition, Commercial Wireless Div., Wireless Telecommunications Bureau, dated February 15, 1996, Re: *ex Parte* Submission in GEN Docket No. 90-314; Clarification of SBC's Request for Interim Relief at p. 2 (noting that the requirement that the cellular subsidiary maintain separate "marketing" personnel, which SBC interprets to mean actual sales personnel, as contained in Section 22.903(b)(3) may not be consistent with Section 601(d) of the 1996 Act).

[114] *BOC Separation Order*, 95 FCC 2d at 1141.

[115] *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986), *aff'd on reconsideration*, 1 FCC Rcd 445 (1986).

[116] 102 FCC 2d at 1175.

of CPNI, and the treatment of such information under the 1996 Act. Section 22.903(f) currently prohibits the BOC from providing to its cellular affiliate any customer proprietary information unless such information is publicly available on the same terms and conditions.[117] Our treatment of the issue of customer proprietary information in other contexts, such as our decision on the AT&T/McCaw merger, was predicated on the use of safeguards developed in rulemakings for the provision by dominant landline common carriers of nonregulated enhanced services and CPE.[118] For the BOCs, the most recent iteration of the CPNI rules is contained in our decision in the *Computer III* proceeding on remand from the Ninth Circuit Court of Appeals.[119] These rules, as well as other permutations that apply in different instances to AT&T and the BOCs, permit these carriers to use the CPNI of some or all of their customers for their marketing of enhanced services and CPE, even if these customers have not authorized the use of such CPNI for such purposes, or, in some cases, have not even been apprised that they can direct the dissemination or protection of such information.[120]

70. Statutory Language. Section 702 of the 1996 Act creates a new Section 222 in Title II of the Communications Act of 1934. Section 222(c)(1), "Confidentiality of Customer Proprietary Network Information," provides:

> PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.-- Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.[121]

Section 222(c)(2) provides that, "[a] telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any

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[117] Section 22.903(f), 47 C.F.R. § 22.903(f).

[118] *See* Applications of Craig O. McCaw and American Telephone and Telegraph Co., 9 FCC Rcd 5836, 5885-86 (1994), *aff'd on reconsideration*, 10 FCC Rcd 11786, *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995) (requiring AT&T, upon the customer's request, (1) to make CPNI available to competing cellular providers, or (2) to prohibit personnel who are involved in cellular marketing from gaining access to that customer's CPNI).

[119] *BOC Safeguards Order*, 6 FCC Rcd at 7610-13 (1991), *aff'd in relevant part sub nom.* California v. FCC, 39 F.3d 919, 930-31 (9th Cir. 1994).

[120] *See, e.g.*, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry Phase II), 2 FCC Rcd 3072, 3096 (1987), *on reconsideration*, 3 FCC Rcd 1150, 1161-64 (1988).

[121] 47 U.S.C. § 222. The quoted language is found at Section 222(c)(1).

person designated by the customer." Section 222(c)(3) requires that a local exchange carrier may use, disclose, or permit access to aggregate CPNI for purposes other than those described above only if the LEC makes such information available to other parties on a nondiscriminatory basis upon request.[122]

71. Positions of the Parties. On March 20, 1996, AirTouch submitted a letter to the Wireless Telecommunications Bureau stating that the new Section 222 of the Act does not vitiate Section 22.903(f) of our Rules, and that "Section 222(c)(1) should not be read to allow unrestricted BOC access to customer CPNI in a manner that eliminates the protections of Section 22.903(f)."[123] According to AirTouch, to the extent that a customer specifically requests in writing the release of its CPNI to another person under Section 222(c)(2),[124] then the restriction in Section 22.903(f) would no longer apply. It also argues, however, that the current rule should continue to apply in cases where the customer approved, pursuant to Section 222(c)(1), the use, disclosure or access to CPNI on terms other than those set forth in that section.

72. Discussion. We have recently initiated a separate proceeding to consider the formulation of CPNI regulations to apply to all telecommunications carriers.[125] In that context, we tentatively concluded that the self-executing provisions of the new Section 222 -- which apply to all telecommunications carriers, require prior customer authorization for individual CPNI disclosure, and set the terms for disclosure of aggregate CPNI -- do not prohibit the Commission from enforcing requirements that are not inconsistent with the new statutory provisions, since nothing in the 1996 Act affects these requirements.[126] For purposes of this rulemaking, we seek comment whether our current CPNI rule in Part 22 is inconsistent with Section 222. We note that continued application of our existing rule would limit a customer's options in granting approval for use or disclosure of, or access to, individually identifiable CPNI under Section 222(c)(1) and (2). Applying our current rule in that context would mean that a customer could choose only between permitting no use of individually identifiable CPNI (except as permitted under Section 222(c)(1) and (d)) or

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[122] *Id.* at § 222(c)(2) and (3).

[123] Letter of Kathleen Q. Abernathy and David A. Gross, AirTouch Communications, to David Nall, Wireless Telecommunications Bureau, dated Mar. 20, 1996.

[124] Section 222(c)(2) states: "DISCLOSURE ON REQUEST BY CUSTOMERS.--A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer." 47 U.S.C. § 222(c)(2).

[125] *See* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, *Notice of Proposed Rulemaking*, CC Docket No. 96-115 FCC 96-221, (released May 17, 1996) (seeking comment on proposed regulations to specify and clarify the obligations of telecommunications carriers with respect to the use and protection of CPNI and other customer information).

[126] *Id.* at para. 38.

making this CPNI publicly available. This restriction of a customer's options would appear to alter the balance between the competitive and consumer privacy concerns embodied in Section 222. In addition, we seek comment whether we should eliminate Section 22.903(f) even if we were to determine that continued application of this rule is not inconsistent with new Section 222, on the grounds that our current rule would be superfluous in light of the comprehensive statutory scheme put in place by Section 222. We also seek comment on the approach advocated by AirTouch, described above, and, if we determine that continued application of Section 22.903(f) to the BOCs is not inconsistent with new Section 222, whether and how we should continue to apply our current CPNI rule.

73. In addition, we seek comment on whether, in considering the joint marketing authorization in Section 601(d) of the 1996 Act together with the CPNI requirements contained in the new Section 222 of the 1934 Act, we should require any particular BOC organizational structure or procedures to guard against the unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services. We ask for comment on the need for, and formulation of, appropriate organizational and procedural guidelines specific to the BOC/CMRS joint marketing situation that would be in accord with both Section 601(d) and Section 702 of the 1996 Act.

(d) Section 251(c)(5); Network Information Disclosure

74. Discussion. In our regulation of cellular service up to this point, we have required no affirmative disclosure of network information outside of the application process. Specifically, we required cellular wireline carriers applying for a cellular system in an area where it also provided landline service to set forth in its application exactly how its system would interconnect with the landline network. This information has to be "of sufficient specificity to enable a potential competitor to design its system to connect with the landline network in exactly the same fashion if the competitor so chooses."[127] These requirements did not create any continuing requirement for network information disclosure after licenses have been issued. Cellular carriers were arguably subject to requirements created in the *Computer II* proceeding, where the Commission applied "to all carriers owning basic transmission facilities the requirement that information relating to network design be released to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates."[128] This "all-carrier rule" was amplified in the CPE and enhanced services contexts, where the

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[127] *See Cellular Reconsideration Order*, 89 FCC 2d at 81.

[128] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 84 FCC 2d 58, 82-83 (1980).

Commission has fashioned both structural and nonstructural safeguards for AT&T and the BOCs regarding the disclosure of carrier network information.[129]

75. The new interconnection provisions of the 1996 Act make it a duty of incumbent local exchange carriers "to provide reasonable public notice of changes to the network necessary for the transmission and routing of services using that local exchange carrier's facilities or networks , as well as any other changes that would affect the interoperability of those facilities and networks."[130] In the Notice of Proposed Rulemaking we adopted to initiate implementation of the new interconnection provisions, we tentatively concluded that:

> (1) 'information necessary for transmission and routing' should be defined as any information in the LEC's possession that affects interconnectors performance or ability to provide services; (2) ' services' should include both telecommunications services and information services as defined in sections 3(46) and 3(20), respectively, of the 1934 Act, as amended; and (3) 'interoperability' should be defined as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.[131]

In addition, we tentatively concluded that "incumbent LECs should be required to disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection."[132] We also sought comment as to how and when the public notice and disclosure of network changes should be provided.[133]

76. In light of the statutory provision regarding public notice by incumbent LECs of network technical changes and our efforts toward comprehensive implementation of that provision in a manner that will include CMRS interconnection to incumbent LECs' networks, we tentatively conclude that no specific Part 22 rule pertaining to network information disclosure by the BOCs is necessary or appropriate. We seek comment on this tentative conclusion. Commenters supporting a specific Part 22 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

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[129] Furnishing of Customer Premises Equipment and Enhanced Services by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 150-51 (1987); *Computer III Phase I Order*, 104 FCC 2d at 1080-86; Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., 102 FCC 2d 655, 686-88 (1985) (*AT&T CPE Order*); Computer and Business Equipment Manufacturers Ass'n, 93 FCC 2d 1226 (1983).

[130] *See* Section 251(c)(5), 47 U.S.C. § 251(c)(5).

[131] *Local Competition Notice* at para. 189.

[132] *Id.* at para. 190.

[133] *Id.* at paras. 191-92.

F. Sunset/Elimination of Section 22.903

77. Current FCC Requirement/Approach of 1996 Act. Section 22.903 and its predecessor, Section 22.901, were established without "sunset" provisions, or the requirement that the Commission periodically review the continued need for the restrictions contained therein. In contrast, the general approach of the 1996 Act to BOC-provided competitive services is initial entry pursuant to establishment of separate subsidiary corporations, through which the competitive service must be provided for a period of years. In the case of BOC entry into interLATA services, a competitive checklist must be met prior to BOC entry into that competitive market, and such entry must be through a structurally separate corporation. This structural separation continues for 3 years after the BOC receives in-region interLATA authorization, unless extended by order of this Commission.

78. With respect to other competitive services, the Act imposes sunset provisions of varying lengths. For example, Section 272(f) provides that the separate affiliate requirements with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company, with the exception of the request fulfillment obligations in subsection (e), shall cease to apply 3 years after the date the BOC is authorized to provide interLATA telecommunications service under Section 271(d), unless extended by Commission rule or order. For interLATA information services, the separate affiliate requirements, with the exception of the request fulfillment obligations in subsection (e), shall cease to apply 4 years after the date of enactment of the 1996 Act, unless extended by Commission rule or order. In contrast, for BOC electronic publishing services under Section 274, the separate affiliate requirement terminates pursuant to subsection (g) 4 years after the date of enactment, with no express provision for extension by Commission rule or order.

79. Option 1: sunset of Section 22.903. We seek ultimately to eliminate any regulatory asymmetry between BOC provision of cellular services, on the one hand, and BOC provision of other CMRS as well as LEC provision of any CMRS, on the other. Yet, the competitive safeguards contained in Section 22.903, as modified through the proposals we have made above, may continue to serve the public interest during the present crucial phase of entry of new wireless competitors into the CMRS markets. Further, the realization of the fundamental regulatory reforms contained in the 1996 Act, including the opening of the LEC network for purposes of local exchange competition pursuant to Section 251, would reduce the need for these safeguards in the not too distant future, and would provide a convenient milepost to mark a transition period. We therefore seek comment on the addition of a sunset provision to Section 22.903, similar to those contained in the 1996 Act for BOC provision of other competitive services. Upon the sunset of the Section 22.903 requirements for each BOC's cellular operations, we propose that such service would be governed by the uniform set of competitive safeguards we propose below in Section VI for all in-region LEC CMRS.

80. If we adopt the transitional approach, we propose to sunset the effectiveness of the Section 22.903 requirements for a particular BOC in tandem with that BOC's receipt of authorization pursuant to Section 271(d) to provide interLATA service originating in any in-region State. The interconnection provisions of the Act, Section 251 and 252, are designed to

promote facilities-based local exchange competition, as reflected in their inclusion in the access and interconnection competitive checklist contained in Section 271(c)(2)(B). In addition to the Section 251 and 252 interconnection requirements, the competitive checklist requires BOCs to provide, *inter alia*, further unbundling of local loops, switching and transport; nondiscriminatory access to 911 and E911 services; directory assistance, and operator call completion services; and nondiscriminatory access to databases and associated signaling necessary for call routing and completing. The effective implementation of these requirements should provide potential CMRS competitors with sufficient protection from interconnection discrimination and monopoly leveraging such that we may safely relax the degree of separation required for BOC cellular operations. We believe that effectively conditioning relief from Section 22.903 upon each BOC's meeting a "competitive checklist" may be a viable approach to assure that, from the regulator's and the competitor's standpoint, a sufficiently "level playing field" is in place such that structural safeguards may safely be eliminated. Moreover, this approach to sunsetting Section 22.903 would provide the BOCs with an added incentive to meet the requirements of the competitive checklist. We seek comment on this formulation of an approach to sunsetting Section 22.903.

81. We also seek comment on alternative sunset dates. Parties advocating a different sunset should provide information supporting their recommendations. Parties proposing that we use a sunset date and\or competitive checklist different than that contained in Section 271(c)(2)(B) and (d) of the 1996 Act should detail why their proposed factors are relevant to the question of BOC cellular safeguards. Parties may also suggest alterations to the list for purposes of setting a sunset date for our Section 22.903 requirements. Finally, we note that, pursuant to Section 271(c)(1)(B), BOCs may be able to meet the requirements of the 1996 Act if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the State has approved a statement of generally available terms that satisfies the competitive checklist of subsection (c)(2)(B). Thus, BOC entry in some areas could potentially occur without a single facilities-based competitor actually obtaining interconnection arrangements consistent with Sections 251 and 252 of the 1996 Act, as long as the BOC is generally offering access and interconnection in a manner that meets the requirements of the competitive checklist. We seek comment on the effect of this aspect of Section 271 on the proposal to tie sunset of Section 22.903 to BOC entry into in-region interLATA markets.

82. Option 2: immediate elimination of Section 22.903. We seek comment on whether we should forgo the transition period we describe above, where a streamlined Section 22.903 would be in effect for BOC cellular operations until a designated sunset, in favor of immediate elimination of Section 22.903 and its replacement by the uniform set of safeguards we propose below in Section VI. This approach would advance our goal of regulatory symmetry more expeditiously,[134] and would remove relatively intrusive requirements that may

[134] In the *Second CMRS Report and Order*, we found that Congress, in amending Section 332 of the Communications Act, "saw the need for a new approach to the classification of mobile services to ensure that similar services would be subject to consistent regulatory classification." 9 FCC Rcd at 1418. In implementing

not be necessary in a more competitive environment. Such an approach would enable the BOCs to realize some degree of efficiencies through integration with landline management and operations, akin to those already available to their largest competitors, AT&T and GTE. Other factors must also be considered, however, primarily the potential effect of such action on evolving competition in both the wireless and the local exchange markets. Although mindful of the *Cincinnati Bell* court's observation that "the structural separation requirements will prevent the Bell Companies from competing with Personal Communications Services providers on a level playing field,"[135] we must first determine whether the playing field will indeed be level at the time Section 22.903 is eliminated. In so doing, we must seriously consider the mandate in Section 332 to consider whether changes in our regulations will promote competition in commercial mobile services.[136] We are concerned about whether transitional structural separation for BOC provision of cellular service, which is more restrictive than any rules applying to other cellular providers or any provision of PCS, will promote or inhibit the development of competition. We therefore seek comment on this aspect of our two alternative safeguards proposals, and whether immediate elimination of Section 22.903 in favor of uniform LEC CMRS safeguards will promote competition and the public interest more effectively than the sunset approach we have outlined above.

83. A significant difference in these two approaches involves the requirement under Section 22.903, that would continue under Option 1 on an in-region basis, that the BOC cellular affiliate remain an independently managed and operating company, with separate officers and personnel. Option 2 would permit integrated management and shared personnel for BOC incumbent local exchange and BOC incumbent wireline cellular operations. Another significant difference is that Option 1 would entail the retention under Section 22.903(c) of the requirement that any research or development performed by BOCs for separate corporations, either separately or jointly, be undertaken on a compensatory basis. Option 2 would eliminate this specific rule, and apply Part 64 cost allocation requirements as those rules apply to any operations involving both regulated and nonregulated aspects. We seek comment on the relative costs and benefits for the public and the BOCs if the independent operation and joint research requirements were eliminated before the BOCs meet the requirements of the competitive checklist in Section 271. Parties should focus specifically on how the relative costs and benefits of independent versus integrated management and personnel bear upon the competitive equity issues discussed above.

G. BOC Provision of Incidental InterLATA CMRS

84. The 1996 Act permits the BOCs to immediately engage, without establishing separate affiliates, in specified in-region interLATA services that the Act defines as

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these amendments, we thus sought to "establish a symmetrical regulatory structure that will promote competition in the mobile services marketplace." *Id.*

[135] *Cincinnati Bell*, 69 F.3d at 768.

[136] 47 U.S.C. § 332(c)(1)(C).

"incidental." Questions have arisen as to whether this authorization bears upon the question of the retention or elimination of Section 22.903. Section 271 defines "incidental interLATA services" as the interLATA provision by a Bell operating company or its affiliate, *inter alia*, "of commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section."[137] Paragraph 8 of Section 332(c) states that "a person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services," but permits the Commission to order unblocked access to the toll carrier of the subscribers' choice, upon appropriate findings. Finally, Section 271(h) states that the provisions of subsection (g) are to be narrowly construed, and that the "Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market."

85. In addition, Section 272, which establishes separate affiliate and nondiscrimination safeguards for BOC provision of, *inter alia*, in-region interLATA telecommunications services, contains a specific exception in subsection (a)(2)(B)(i) for incidental interLATA services described in paragraphs (1), (2), (3), (5) and (6) of section 271 (g). Section 272(f)(3), in turn, specifically preserves "the authority of this Commission, under any other section of the Act to prescribe safeguards consistent with the public interest, convenience and necessity."[138] Thus Section 271(g)(3) authorizes immediate market entry by BOCs for the provision of in-region, "incidental" interLATA services, which are defined as the provision of CMRS on a non-"1+"equal access basis.

86. We do not believe that the authorization contained in Sections 271(g)(3) and 272(a)(2)(B)(i) for immediate BOC provision of in-region, incidental interLATA service, defined as commercial mobile radio service, limits our authority to retain our current BOC cellular separate affiliate rules, or to prescribe alternative rules, should we determine that such rules constitute an appropriate competitive safeguard.[139] We note, in this regard, that Section 271(f)(3) preserves our authority to prescribe safeguards consistent with the public interest, convenience and necessity. We seek comment on this analysis.[140]

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[137] 47 U.S.C. § 271.

[138] *See* 47 U.S.C. § 272(a)(2)(B)(i) and (f)(3).

[139] 47 U.S.C. §§ 271(g)(3) and 272(a)(2)(B)(i). We express no opinion here as to the scope of the exception created by Section 271(g)(3), as it is not necessary for purposes of our discussion of the provision's effect on our cellular structural separation requirement.

[140] 47 U.S.C. § 271(f)(3).

V. SYMMETRY OF CELLULAR SAFEGUARDS

87. One of the principal criticisms of our cellular structural separation requirement is that it applies only to the BOCs, but not to other large LECs with similar characteristics, particularly GTE. This lack of regulatory symmetry was a concern of the court in the *Cincinnati Bell* decision, and presents the Commission with a complex problem in this period of transition to more competitive landline and wireless markets. We believe that this is an appropriate time to reexamine the basis for excluding LECs other than the BOCs from the scope of the rule.[141]

88. We note that in 1994, we extended the BOC open network architecture (ONA) and non-discrimination safeguards to GTE, in recognition, *inter alia*, of the fact that GTE's merger with Contel Corporation had significantly expanded the scope of GTE's operations and increased the benefits that GTE would bring to its customers by conforming to the *Computer III* BOC ONA and nondiscrimination requirements.[142] On the other hand, Congress, in the 1996 Act, did not treat the BOCs and GTE in an equivalent manner with respect to provision of in-region interLATA services.[143]

89. Discussion. The lack of regulatory symmetry between BOC-provided cellular service and LEC-provided cellular service under Section 22.903 presents a difficult problem in this period of transition to more competitive landline and wireless markets. Rather than distinguish between BOCs and other LECs, it would arguably be more consistent to apply Section 22.903 to GTE, which is similar in size to the BOCs, or to all LECs above a particular size, e.g., all Tier 1 LECs. We have used the Tier 1 demarcation for analogous

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[141] In the *Cellular Reconsideration Order*, 89 FCC 2d at 79, we found that the costs to independent and rural LECs of establishing structurally separate cellular subsidiaries outweighed any possible public benefit. We further found that this was not true in the case of the AT&T LECs, in large part because the vast size of AT&T placed it in a better position to afford such costs of incorporation and lost efficiencies of scope.

[142] Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, *Report and Order*, 9 FCC Rcd 4922 (1994). Although the Notice in CC Docket No. 92-256 had proposed subjecting GTE only to the ONA requirements, the Order required GTE to comply with all the nondiscrimination safeguards applicable to the BOCs. GTE was required to address how it would comply with the nondiscrimination safeguards in its ONA Plan. These safeguards consist of Customer Proprietary Network Information (CPNI) rules, network information disclosure rules, and nondiscrimination reporting requirements. The Order observed that as a Tier 1 LEC, GTE is already fully subject to the same cost accounting safeguards adopted in the *BOC Safeguards Order*. *Id.* at 4941-42.

[143] Although the BOCs are released from the interLATA prohibition of the AT&T Consent Decree pursuant to Section 601(a)(1), their entry into in-region interLATA service markets pursuant to Section 271 is heavily conditioned, as described above, and included the requirement that they establish separate affiliates pursuant to Section 272. GTE, on the other hand, is released from the constraints of the GTE Consent Decree pursuant to Section 601(a)(2), without any additional conditions, such as establishment of separate affiliates or meeting a competitive checklist, placed upon GTE's entry into in-region interLATA, or any other services. *See* Section 601(a)(1) and (2).

purposes in determining which LECs would be subject to expanded interconnection rules[144] or required to comply with certain cost accounting rules, including the required filing of Cost Allocation Manuals.[145] Nevertheless, regulatory consistency or "symmetry" is only one among many of the considerations we must take into account when evaluating whether to impose structural separation on non-BOC LECs.

90. Based upon the record before us, the rationale for imposing structural separation on the BOCs' cellular service would appear to apply to all Tier 1 LECs. Yet, if we adopt the proposal to sunset Section 22.903 in tandem with BOC entry into in-region interLATA services, and to replace its provisions with the streamlined safeguards we here propose for in-region LEC PCS, we do not believe that the relative benefits of imposing Section 22.903 on any additional Tier 1 LECs for a transition period followed by a sunset would outweigh the costs of such requirements. Adoption of the alternative proposal to eliminate Section 22.903 immediately would of course moot this issue in its entirety. We do no therefore propose to apply Section 22.903 to any additional LECs at this time. We seek comment on this approach.

91. We also propose to require all the Tier 1 LECs to implement the same service safeguards for their in-region cellular service that we propose for in-region PCS and other CMRS in Section VI below. We seek comment on the costs to the Tier 1 LECs of establishing nonstructurally separate affiliates as described in Section VI.

92. Finally, we do not believe it appropriate to impose either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on any non-Tier 1 independent and rural LECs because, on balance, we believe that the cost and potential disruption of requiring non-Tier 1 LECs to establish new separate affiliates for the provision of cellular service would likely be significant, both in terms of the direct costs of incorporation and lost efficiencies of joint operations, facilities, and staff. These costs are obviously different than the going-forward costs of retaining a structurally separate corporate entity, discussed above. We therefore seek comment on the nature and extent of such costs, and ask that commenters be specific in their quantification of both direct costs of separate incorporation, and of lost economies of scope. We seek comment on our tentative conclusion that such costs likely outweigh the benefits of imposing a limited separate affiliate requirement.

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[144] *See. e.g.*, Expanded Interconnection with Local Telephone Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*) (requiring Tier 1 LECs, other than participants in National Exchange Carrier Association (NECA) pools, to permit third parties to interconnect their transmission facilities to those of the LECs); Section 64.1401(a), *et seq.*, 47 C.F.R. §§ 64.1401(a), *et seq.* (characterizing carriers subject to expanded interconnection obligation as every LEC classified as a "Class A company under § 32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant, as provided in part 69, subpart G of this chapter").

[145] As noted earlier, we here use the term "Tier 1" LEC as a short-hand reference to those carriers with over $100 million in revenues from regulated telecommunications operations that are subject to the CAM filing requirements under Section 64.903.

VI. SAFEGUARDS FOR PROVISION OF CMRS BY LECS

93. In this section, we address the issue of safeguards for LEC-provided PCS and other CMRS. While our current rules require the BOCs to comply with Section 22.903 structural safeguards in the provision of cellular service, we determined in the *Broadband PCS Order* that we would require implementation of nonstructural safeguards to protect against discrimination and cross-subsidization in the provision of PCS by both BOCs and other LECs. In the *CMRS Second Report and Order*, we extended this decision to apply accounting safeguards to all LEC-provided CMRS. We deferred consideration of additional safeguards issues -- including the asymmetry between our cellular and PCS rules -- to a subsequent proceeding. We return to these issues in this proceeding because we believe that developing clear and consistent safeguards is essential to ensuring that LEC provision of CMRS does not impair competition in the wireless market by other CMRS providers. In order to address the concerns raised by the *Cincinnati Bell* court, to ensure that our rules treat similar services in a consistent manner, and to respond to the changes in the 1996 Act relating to joint marketing, CPNI, and network disclosure, we believe that further examination of the question of competitive safeguards for LEC-provided CMRS is appropriate.

A. Present Competitive Safeguard Alternatives

94. Structural and Nonstructural Safeguards. As we discussed in Sections II and III, the BOC cellular structural separation requirement was, in essence, an adaptation of the Commission's *Computer II* structural separation rules for AT&T system's provision of enhanced services. *Computer II* structural safeguards were designed to offer the maximum amount of separation between regulated and unregulated BOC offerings in situations where the competitive concerns were found to outweigh lost operating efficiencies. In contrast, the *Broadband PCS Order*, relied, in large part, on the *Computer III* proceeding, in which those structural separation requirements for BOC provision of enhanced services were replaced with a set of nonstructural safeguards, that were to be phased-in in stages.[146]

95. The *Computer III* nonstructural safeguards featured implementation of "open network architecture" or "ONA," designed to ensure nondiscriminatory access to network facilities and functions for all enhanced service providers (ESPs). ONA was to provide all enhanced service providers equal access to the components of the BOCs' telephone network, as well as the ability to select network service elements not used by the BOCs in providing their own enhanced services. As a first step in implementing *Computer III*, the Commission permitted the BOCs, pending full structural relief, to offer individual enhanced services on an integrated basis (*i.e.*, directly by the operating company, rather than through a separate affiliate) following approval of service-specific comparably efficient interconnection (CEI)

[146] *Computer III* Phase I Order, 104 FCC 2d at 1063-70.

plans.[147] The other nondiscrimination safeguards of *Computer III* include: accounting safeguards; timely disclosure to competing ESPs of network information, including technical interfaces; access to and use of CPNI; and quarterly reporting to help ensure that BOC provision of basic services to competing ESPs was nondiscriminatory in terms of quality, installation, and maintenance. With the full implementation of ONA, *Computer III* envisioned that the BOCs would be permitted to provide integrated enhanced services without prior Commission approval of service- specific CEI plans.[148]

96. Allowing BOCs to provide enhanced services pursuant to non-structural safeguards was considered a means to achieve several important public interest goals, including bringing enhanced services more quickly and effectively to the consumer market by permitting the BOCs to realize fully their vast potential. This would permit the BOCs to use their extensive, geographically dispersed facilities and the associated management and operational resources, to provide such services throughout the country. In particular, it was designed to permit BOCs to use existing marketing contacts with virtually every household within their regions to market enhanced services to consumers inexpensively, to use the same personnel to repair and install the services and equipment necessary to provide basic and enhanced services, and to use their expertise to engage in research and development of enhanced services.[149]

97. Competitive Carrier. In the *Competitive Carrier* proceeding, the Commission established yet another approach to the question of the degree of separation appropriate for certain LEC-provided common carrier services.[150] We distinguished between carriers with

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[147] In their CEI plans, BOCs were required to describe: (1) the enhanced service or services to be offered, (2) how the underlying basic services would be made available for use by competing enhanced service providers (ESPs), and (3) how the BOC would comply with the other nonstructural safeguards *Computer III* imposed.

[148] *Computer III* Phase I Order, 104 FCC 2d at 1064. Following a remand from the United States Court of Appeals for the Ninth Circuit, the Commission in 1991 issued the *BOC Safeguards Order*, which further strengthened the *Computer III* nonstructural safeguards through increased cost accounting regulation. *BOC Safeguards Order*, 6 FCC Rcd at 7578-97. Following a series of court challenges, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994)(*California III*), the question of the adequacy of the Commission's nonstructural safeguards to prevent BOC anti-competitive behavior is once again pending before the Commission. *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995) (*Computer III* Further Remand NPRM).

[149] *BOC Safeguards Order*, 6 FCC Rcd at 7575.

[150] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (*Further NPRM*); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Fourth Report and Order*), *vacated AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T,*

market power (dominant carriers) and those without market power (non-dominant carriers), and gradually relaxed regulation of non-dominant carriers on the grounds that non-dominant carriers lacked the incentive and ability to engage in conduct that might be anticompetitive or otherwise inconsistent with the public interest.[151]

98. In its *Competitive Carrier Fifth Report and Order,* the Commission clarified that an "affiliate" of an independent LEC for purposes of qualifying for regulation as a non-dominant carrier is "a carrier that is owned (in whole or part) or controlled by, or under common ownership (in whole or part) or control with, an exchange telephone company."[152] The Commission went on to explain that in order to qualify for non-dominant status, the affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company services at tariffed rates and conditions. The Commission specified that the separation requirements would provide some protection against cost-shifting and anticompetitive conduct by an independent LEC that could result from using its control of bottleneck facilities. The Commission concluded that the specific separation requirements would not impose excessive burdens on independent LECs, and noted that those requirements were less stringent than those established in *Computer II.*[153]

99. As we noted earlier, in response to the 1996 Act's Section 271(b) authorization for the BOCs to begin immediately to provide interLATA services originating outside of their in-region areas, we adopted, as an interim measure, non-dominant carrier regulation for BOC provision of interstate, interexchange services originating outside of their in-region states if those services were provided through an affiliate that complied with our *Competitive Carrier* rules. In requiring that the non-dominant interexchange affiliate be a separate legal entity, we stated: "[i]n no other sense do we require 'structural separation.'"[154] By specifically permitting the sharing of personnel and other resources and assets, and banning only joint ownership of transmission and switching facilities, we found that application of the

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113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated MCI Telecommunications Corp. v. FCC,* 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier* proceeding).

[151] *First Report and Order*, 85 FCC 2d at 20-21. In its *First Report and Order*, the Commission classified local exchange carriers ("LECs") and AT&T as dominant carriers and concluded that these dominant carriers should be subject to the "full panoply" of then-existing Title II regulation. *Id.* at 22-24. In its *Fourth Report and Order*, the Commission considered how it should regulate the provision of interstate, interexchange services by independent LECs. The Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. *Fourth Report and Order*, 95 FCC 2d at 575-79.

[152] *Fifth Report and Order*, 98 FCC 2d at 1198.

[153] *Id.* at 1198-99.

[154] *See* Bell Operating Company Provision of Out-of-Region, Interstate, Interexchange Services, *Report and Order*, CC Docket No. 96-21, FCC No. 96-288 (released July 1, 1996) (*BOC Out-of-Region Order*) at para. 22.

Competitive Carrier rules would avoid excessive burdens and would not impede the BOCs' ability to realize efficiencies through the use of joint resources.[155]

B. Nonstructural Safeguards in PacTel PCS Plan

100. On July 10, 1995, Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis (PacTel), filed a "Plan of Nonstructural Safeguards Against Cross-Subsidy and Discrimination" (PacTel Plan).[156] On February 27, 1996, the Wireless Telecommunications Bureau approved the PacTel Plan as in compliance with existing nonstructural safeguards for LEC-provided PCS, and authorized PacTel to commence operations, subject to any compliance actions PacTel needs to ensure that its Plan is in compliance with all aspects of the 1996 Act.[157] The Bureau noted that the Plan was filed prior to passage of the 1996 Act, and that the Commission would shortly institute this rulemaking, and that if, as a result of the rulemaking, the LEC PCS rules or policies change, then PacTel will have to modify its Plan and operations accordingly. The *PacTel Plan Order* dismissed the arguments of opponents to the PacTel Plan that the existing safeguard rules and policies are inadequate, or that the Commission should adopt additional safeguards, as issues that properly belong in the context of a rulemaking. The proceeding before the Bureau was thus properly limited to a determination of whether the Plan complies with existing rules, not with the adequacy of such rules.[158] In response to objections by BellSouth that PacTel was not required to file a plan, the Bureau observed that PacTel relied on the Commission's statements regarding safeguards as evidence that the Commission fully considered the implications of LECs providing PCS in-region.[159]

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[155] *Id.* Although we found the *Competitive Carrier* separation requirements a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate interexchange services, we also restated our intention to consider, in a separate proceeding, modifications or elimination of these separation requirements. *See id.* at para. 32. We previously released a Notice initiating, *inter alia*, this inquiry in the context of determining appropriate nondominant treatment for LEC provision of certain interstate, interexchange services. *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, *Notice of Proposed Rulemaking*, FCC 96-123, released March 25, 1996, at paras. 61-62.

[156] The Wireless Telecommunications Bureau established a pleading cycle in response to PacTel's Plan. On August 16, 1995, AirTouch Communications, Inc. (AirTouch); Cox Enterprises, Inc. (Cox); MCI Telecommunications Corporation (MCI); Nextel Communications (Nextel); and Sprint Telecommunications Venture (STV) filed comments on PacTel's Plan. On September 12, 1995, BellSouth Telecommunications, Inc. (BellSouth) and PacTel filed reply comments.

[157] *See PacTel Plan Order.*

[158] *PacTel Plan Order* at paras. 7-11.

[159] *Id.* at para. 10.

1. Summary of PacTel's Plan

101. PacTel's Plan as proposed consisted of five principal parts: (1) establishment of a non-structurally separate affiliate for corporate purposes only; (2) reliance on existing Part 32 and Part 64 accounting safeguards, as incorporated into its LECs' cost accounting manuals (CAMs); (3) compliance with established interconnection obligations; (4) voluntary compliance with the Commission's *Computer III* CPNI rules; and (5) voluntary compliance with the Commission's *Computer III* network disclosure rules.[160]

102. Separate Affiliate. PacTel stated that it would provide PCS through a wholly-owned subsidiary of Pacific Bell, Pacific Bell Mobile Services (PBMS). PacTel explained that Pacific Bell, Nevada Bell and PTMS are subsidiaries of Pacific Telesis Group, and PTMS is the PCS licensee.[161] PTMS has entered into a letter agreement with PBMS whereby PBMS will design, construct, manage, operate and market services for PTMS in California and Nevada. PTMS will retain control and supervision over the licensed system. PBMS is a subsidiary of Pacific Bell for corporate purposes only, not a structurally separate subsidiary, as that term has been defined by the Commission.[162] PacTel explained that it chose to provide PCS services through a separate subsidiary, rather than as a fully integrated corporate division, for three reasons: (1) since PCS is a competitive service with associated risks, a separate subsidiary will permit a different compensation system that reflects the risk in the business; (2) a separate subsidiary will provide a more discrete measurement of operating results; and (3) it provides the advantage of a single purpose entity that can still take advantage of many of the economies of scope described by the Commission, such as joint marketing and collocation.[163]

103. Cost Accounting/Affiliate Transactions. PacTel explained that having a separate affiliate makes it easier to track PCS costs and to keep these costs separated from regulated costs, because it limits joint and common costs between PCS and regulated telephone service.[164] According to PacTel, its telephone operating companies have already revised their CAMs to describe the services they will provide the PCS subsidiaries.[165] Consistent with the

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[160] *Id.* at para. 3.

[161] PTMS was established to hold the PCS licenses to, *inter alia*, protect Pacific Bell's credit rating from any adverse impacts flowing from entry into a new competitive service. PacTel Plan at 3-4. In the A and B block auction, PTMS obtained PCS licenses for the Los Angeles and San Francisco MTAs.

[162] PacTel Plan at 3-4 & n.9. The Plan provides that Nevada Bell may do marketing in Nevada.

[163] *Id.* at 4-6.

[164] *Id.* at 4-6.

[165] On December 31, 1994, and June 30, 1995, Pacific Bell and Nevada Bell filed revisions to their CAMs which included changes to the affiliate transactions involving Pacific Bell Mobile Services. The Commission invited public comment on the two sets of changes of these, and other LECs subject to the CAM filing

Commission's Part 32 requirements, all services provided to PBMS by Pacific and Nevada Bell will be at tariffed rates, or if not tariffed, at fully distributed cost unless there is a market rate for such services. Finally, the Plan did not anticipate the sale or transfer of assets between Pacific Bell and Nevada Bell and PBMS. If a sale or transfer of assets does occur, the Plan provides that it will be done in accordance with all applicable rules.[166]

104. Interconnection. PacTel stated that interconnection services are now available to all CMRS providers in California by negotiated agreement, but that Pacific Bell has filed a proposed tariff, which is pending before the California Public Utilities Commission (CPUC).[167] Nevada Bell has an effective interconnection tariff on file with the Public Service Commission of Nevada, and any interconnection services purchased by PBMS from Nevada Bell will be at tariffed rates. PacTel claimed that PBMS will receive the same fair and nondiscriminatory interconnection arrangements and services that Pacific Bell and Nevada Bell provide other CMRS carriers pursuant to state and federal requirements. This includes types of interconnection, speed of installation of facilities, maintenance or repair. In addition, PBMS will collocate equipment on Pacific Bell and Nevada Bell property. PacTel stated that PBMS will pay either fully distributed cost for such services for which there is no tariff price or prevailing price. PacTel argued further that PBMS will receive neither a pricing advantage due to the location of PBMS equipment at Pacific Bell and Nevada Bell facilities, nor a volume discount. PacTel explained that Nevada Bell does not currently offer discount rates for wireless interconnection, and stated that Pacific Bell's discount rates are based on the term of the contract and the individual carrier's projected minutes of use growth and not on total volume. PacTel asserted that all wireless carriers that commit to the same term and growth are eligible to receive the same discount from Pacific Bell.[168]

105. Joint Marketing/CPNI. PacTel stated that it anticipates that PBMS will use the LEC's sales channels for some of its marketing activity, to take advantage of economies of scope identified in the *Broadband PCS Order*. Further, PBMS will compensate Pacific Bell and Nevada Bell pursuant to the Commission's Part 64 rules, and will pay fully distributed cost for these services as well as any other services for which there is no tariff price or prevailing price. In its Reply Comments, PacTel committed to comply with the

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requirements, in Public Notices released, respectively, on January 19, 1995 and July 14, 1995. *See* Public Notice, Carriers File Revision to their Cost Allocations Manuals, 10 FCC Rcd 679 (1995); Public Notice, Carriers File Revisions to their Cost Allocations Manuals, 10 FCC Rcd 7685 (1995). No comments were filed with respect to either set of revisions.

[166] *Id.* at 5-6, 16.

[167] PacTel explained that if the state interconnection tariff is approved, PBMS will purchase interconnection services under the tariff. However, it is uncertain when this could occur, because the ALJ for the CPUC recommended in September, 1994, that the proposed tariff be included in its proceeding on open access framework for network architecture, but no further action was taken.

[168] *See generally* PacTel Plan at 7-13.

Commission's CPNI and network disclosure rules already in place regarding public notification and public disclosure of information.[169]

2. Record in Response

106. Commenters responding to the PacTel Plan raised a number of procedural and substantive issues with respect to the contents of the Plan.[170] In general, as reflected in the Cox comments, opponents of the PacTel Plan argued that the Plan fails to provide effective safeguards against cross-subsidization and interconnection discrimination, and thus fails to address the significant threat to competition that integration of LEC landline monopoly facilities and advanced PCS spectrum poses. Cox claimed that Part 64 accounting rules are inadequate to prevent cross-subsidization because they are designed solely to separate the costs of regulated telephony service from the costs of non-regulated activities, but do not provide guidance for the carriers or the Commission on what appropriately constitutes a "PCS cost" as opposed to a telephone cost. Cox further complained that the benefits of "economy of scope" of integrated operations in this case are illusory because this assertion begs the central question of what costs are properly allocated to PCS and telephony, respectively.[171]

107. Sprint urged that the Plan is defective because, aside from stating that PacTel intends to comply with existing Commission interconnection rules and policies, it fails to provide any basis for the Commission (or anyone else) to assess the carrier's actual compliance with these interconnection requirements. Sprint argued that failure to establish and enforce specific safeguards with regard to LEC interconnection arrangements could seriously impede deployment of new competing networks. Sprint contended that discriminatory policies that allow collocation only for the monopoly LEC affiliate have been acknowledged by the Commission as a danger to fair competition; nonetheless, the Plan suggests that Pacific Bell will allow collocation of PCS facilities only for its PCS affiliates, without providing assurance that other providers will have similar opportunities.[172] Sprint objected that under the Plan, Pacific Bell's PCS affiliates will have an inherent non-pricing advantage if they can physically collocate facilities and maintenance crews at the LEC's end offices without any comparable interconnection offered to similarly situated providers.[173]

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[169] PacTel Reply Comments at 28-31.

[170] *See PacTel Plan Order* at para. 4.

[171] Cox Comments at i-ii.

[172] Sprint Comments at 6-7, *citing* Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994).

[173] *Id.* at 8.

Finally, Sprint raised concerns about joint marketing activities between Pacific Bell's telephony and PCS sales personnel.[174]

C. Discussion

1. Preliminary Matters

108. Cellular/PCS Regulatory Parity. As a general matter, we seek comment on whether there are differences between cellular and PCS that justify different regulatory treatment, at least in the short term. We note that PCS was intended to be competitive with both incumbent cellular systems and landline networks, and its identity as a new entrant places PCS providers in a different competitive situation from incumbent cellular carriers. As is evident in the *Broadband PCS* proceeding, the Commission intended that the new personal communications service would compete with cellular service at the outset, and eventually compete with, complement, or, where appropriate, replace landline local exchange service.[175] In addition, PCS providers face competitive hurdles unlike those existing when the cellular service was established, such as auction payments, competition with incumbent cellular providers themselves, and the need, in some case, to relocate incumbent microwave users before PCS can become fully operational. Permitting LECs greater flexibility in the provision of PCS than the BOCs enjoy with respect to cellular was part of the Commission's plan to get PCS into the market quickly, and to encourage the LECs to engineer their network architectures in a "PCS-friendly" manner. This added degree of flexibility may act as a counterbalance to the competitive hurdles unique to PCS. We seek comment whether this analysis pertains today in the same way as when the Commission established PCS as a new service.

109. We continue to believe that it serves the public interest to permit the LECs, including the BOCs, flexibility in the provision of PCS through nonstructural safeguards as part of our efforts to introduce greater competition to the CMRS market. LEC participation in PCS was originally considered very important to getting the service started quickly, and on a broad scale, so as to provide vigorous competition to incumbent cellular providers, and this public interest benefit continues to inform our judgement regarding the need to permit flexibility in service provisioning. We also believe, however, that such PCS safeguards should go beyond the joint cost accounting safeguards specifically identified in the *Broadband PCS Order,* and the case-by-case approach that has served until now.

110. Need for Uniform Safeguards. Our decisions in the *Computer II* and *Computer III* proceedings set forth alternative comprehensive frameworks for competitive safeguards. In contrast, the *Broadband PCS Order* stated simply that LECs must implement an acceptable plan for nonstructural safeguards prior to commencing service, and identified only existing

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[174] *Id.* at 9.

[175] *See, e.g., Broadband PCS NPRM,* 7 FCC Rcd at 5701-07.

accounting safeguards as specifically applicable to LEC provision of PCS.[176] In light of our experience in evaluating the Nonstructural Safeguards Plan filed by PacTel, we now believe it appropriate to establish the safeguards which we contemplated in the *Broadband PCS* proceeding, and require that all Tier 1 LECs providing PCS in their in-region states comply with a uniform set of service safeguards. We believe that the *Competitive Carrier* separate affiliate requirements offer a suitable middle path between the two alternatives of the *Computer II* structural and *Computer III* nonstructural safeguards. The *Competitive Carrier* model does not create the costs and administrative burdens of independent operation requirements and offers the carriers greater flexibility in structuring their competitive businesses. We believe the added flexibility is important if PCS is to enter the market quickly and reach its full potential. At the same time, this regulatory model offers competitors and the Commission greater visibility for the detection of any anticompetitive behavior on the part of LECs.

111. We believe that the imposition of competitive safeguards in addition to accounting safeguards for LEC provision of in-region broadband PCS will serve the public interest. We further believe that this step was foreshadowed by the Commission's suggested requirement that LECs file Nonstructural Safeguards Plans with the Commission prior to commencing PCS operations. If accounting safeguards were all that were intended in the *Broadband PCS Order*, then such a plan would be superfluous for the largest LECs, because they are already under an obligation imposed in Part 64 to make the appropriate changes in their Cost Allocation Manuals.[177] Furthermore, the suggested requirement of the Nonstructural Safeguard Plan was also intended to address the carriers' safeguards against discriminatory interconnection practices, as PacTel has clearly understood. We believe it is time to replace our initial case-by-case approach with a uniform set of requirements. This should be more efficient for both the carriers and the Commission, as it will streamline the review process and provide a consistent regulatory framework for future competition. In addition, the *Broadband PCS Order*'s decision that nonstructural safeguards would be sufficient for LEC PCS rested, in part, on the cellular/PCS cross-ownership rules "to ensure that LECs do not behave in an anticompetitive manner."[178] In a recently released Notice, we seek comment on whether our PCS/cellular cross-ownership rule should be relaxed or simplified.[179] Thus, our

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[176] *Broadband PCS Order*, 8 FCC Rcd at 7748 n.98, 7751-52.

[177] *See* 47 C.F.R. § 64.903.

[178] *Broadband PCS Order*, 8 FCC Rcd at 7751.

[179] *See* Amendment of part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular PCS Cross-Ownership Rule, GEN Docket 90-314, Notice of Proposed Rule Making, FCC 96-119 (released March 20, 1996) (*CMRS Spectrum Cap;Cellular\PCS Cross-Ownership Notice)*. This Notice responds to the *Cincinnati Bell* decision, in which the court held that our cellular/PCS cross-ownership rule and 20 percent attribution rule are arbitrary, and remanded these issues, together with the BOC cellular structural separations issue, to the Commission for further proceedings. Specifically, we sought comment on whether to eliminate our PCS/cellular cross-ownership limitations and our 40 MHz PCS spectrum cap in favor of the single

proposed changes to the cross-ownership rules also argue in favor of reconsideration of the sufficiency of the nonstructural safeguards currently in place for LEC PCS. We seek comment on this analysis.

112. It is evident that the potential costs of imposing additional nonstructural safeguards on LEC provision of PCS at this time are different from the costs for either retaining structural separation for BOC cellular service, or for extending such structural separation requirements for the first time to other LECs, such as GTE. In the case of BOC cellular service, the costs of establishing the subsidiary have already been incurred, whereas in the case of the independent LECs, the re-arrangement of existing corporate structures would entail additional costs of a particular scope and nature. We also recognize that, in the case of an entirely new service such as in-region LEC broadband PCS, the start-up costs of structural separation would likely be of a different nature and scope altogether. Few LECs currently have in-region PCS licenses as a result of our cellular-PCS cross-ownership and spectrum cap requirements. It is also not clear, with the exception of Pacific Bell, which has already filed its Plan of Nonstructural Safeguards for PCS, how far along those other LECs are in building-out their PCS networks and in structuring their PCS operations from an organizational perspective. We seek comment on this analysis and on the relative costs of imposing the requirements we propose in this section.

113. In-Region/Spectrum Allocation Limitations. With respect to the imposition of nonstructural safeguards, the *Broadband PCS Order* did not distinguish between in-region versus out-of-region PCS, nor did it distinguish among LEC PCS providers on the basis of the amount of PCS spectrum they would be utilizing to provide service. Many of the comments in response to the PacTel Plan identified the dangers of fully integrated LEC provision of broadband PCS, through a 30 MHz license, in the same service area in which the LEC is the incumbent local exchange provider. Echoing this distinction, U S West, in a recent *ex parte* submission, has argued that the Commission recognized in the *Broadband PCS Order* the significant potential consumer benefits associated with permitting LECs to hold 10 MHz PCS licenses and provide in-region PCS service on an integrated basis. U S West further contends that existing accounting safeguards are adequate for LEC provision of in-region 10 MHz PCS.[180]

114. As we found with respect to cellular service in Section III, above, we do not believe that the competitive dangers of integrated LEC provision of landline and PCS outside of the local exchange service areas in which they are the incumbent LEC raises the same concerns as in-region integrated services. In fact, we have found that out-of-region

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45 MHz CMRS spectrum cap. Under such a rule, cellular operators would be permitted to acquire licenses for two 10 MHz blocks of broadband PCS spectrum. *Id.* at para. 66.

[180] *Ex Parte* Letter from Eldridge A. Stafford, U S West, Inc., to Mr. William F. Caton, Acting Secretary, FCC, dated March 15, 1996, attaching *ex parte* Letter from Eldridge A. Stafford, U S West, Inc., to Ms. Barbara Esbin, Commercial Wireless Division, FCC, dated March 15, 1996, at page 4, *citing Broadband PCS Order*, 8 FCC Rcd at 7751-52, para. 26.

competition from LECs offering integrated service packages will promote local exchange competition.[181] We therefore propose to limit LEC PCS nonstructural safeguards to in-region broadband PCS service. We seek comment on this tentative conclusion. In addition, we seek comment on the relevance of the distinction raised in the record between LEC holders of 30 MHz versus 10 MHz in-region PCS licenses for our proposed uniform nonstructural safeguards. Specifically, we seek comment on whether we should exempt LEC licensees with no more than 10 MHz of PCS spectrum from some or all of the competitive safeguards discussed herein, with the exception of those safeguards which arise from the provisions of the 1996 Act. We also seek comment on the effect of the proposed rule changes described in the *CMRS Spectrum Cap; Cellular\PCS Cross-Ownership Notice* have on the safeguards under discussion.

115. Applicability to Tier 1 LECs. We believe that our goal of regulatory symmetry should be tempered by a realistic assessment of the costs and benefits of applying our proposed competitive safeguards to small telephone companies. We note that small telephone companies, particularly those operating in rural areas, are uniquely positioned to provide wireless services to populations which might otherwise not receive them.[182] We wish to take no action that would unduly burden or discourage small telephone company entry into cellular and PCS markets nor do we believe that these companies pose a significant threat of anticompetitive conduct toward potential wireless competitors, as their ability to leverage their bottleneck local exchange facilities is limited as compared to that of the BOCs and the larger independents. On the other hand, we also seek to ensure that the local exchange and exchange access customers of the small telephone companies are not unduly burdened with the costs of these companies' ventures in competitive wireless markets. We therefore would apply the uniform set of competitive safeguards that we propose here only to the Tier 1 LECs. We seek comment on this proposal and on what changes, if any, to our accounting rules are necessary or appropriate to ensure that LECs not subject to our proposed competitive safeguards will not cross-subsidize PCS activities from the regulated telephone ratebase.

2. Proposed Competitive Safeguards for LEC In-Region PCS

116. The Wireless Telecommunications Bureau recently permitted the PacTel Plan to take effect, subject to amendments made necessary by the changes contained in the 1996 Act with respect to CPNI,[183] and also advised PacTel to include in this filing any other modifications which it deems necessary to bring its Plan into full compliance with the recent

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[181] *SBMS Waiver Order* at para. 20.

[182] *See, e.g.,* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 5532 (1994) (permitting geographic partitioning of PCS service areas to rural telephone companies as effort to promote PCS to otherwise under-served populations).

[183] Section 222(c)(2). There are exceptions to these restrictions. *See* Section 222(d).

legislation.[184] Upon review of the record in the PacTel Plan proceeding, we have decided to use the five elements PacTel identified in its Plan, as modified by the Bureau's Order, as the basis of the competitive safeguards that we propose in this Notice. That is, we propose that all Tier 1 LECs providing broadband PCS within their in-region states should implement a nonstructural safeguard plan, and file the plan for approval with this Commission, that includes the following elements: (1) a description of a separate affiliate, as defined herein, for the provision of PCS; (2) a description of compliance with our Part 64 and Part 32 accounting rules, with copies of the relevant CAM changes attached; (3) a description of planned compliance with all outstanding interconnection obligations; (4) a description of compliance with all outstanding network disclosure rules; and (5) a description of planned compliance with the CPNI requirements in new Section 222 of the Act.[185]

117. Separate Affiliate. PacTel has presented a convincing justification for its choice of a separate affiliate to provide its PCS service, from both a business and a regulatory standpoint. For the reasons we have previously identified, requiring the LEC to establish a separate affiliate to provide a competitive service lessens the opportunities for cost-shifting, price discrimination and interconnection discrimination, and increases the ability of both competitors and the Commission to detect any anticompetitive behavior. As PacTel argued, the separate affiliate structure makes it easier to track PCS costs and to keep those costs separated from regulated telephone costs. It also decreases the scope of any joint and common costs from the outset. We also note that BellSouth has established a separate affiliate, "BPCI," for the provision of its in-region PCS, and similarly, Ameritech established ACI as the vehicle to provide its in-region integrated landline and cellular services. Thus, it would appear to be an unexceptional and reasonable business practice to enter into new competitive ventures through a separate corporate affiliate. In addition, it is consistent with the approach taken by Congress in the 1996 Act with respect to BOC entry into previously prohibited or restricted services. For these reasons, we propose to require that LEC in-region broadband PCS services should be provided through a corporate affiliate that is separate from the local exchange carrier.

118. We propose to require this affiliate to meet the separation conditions outlined in the 1985 Competitive Carrier *Fifth Report and Order*. That is, the affiliate must: (1) maintain separate books of account;[186] (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company-

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[184] *PacTel Plan Order* at para. 9.

[185] 47 U.S.C. § 222.

[186] Books of account refer to the financial accounting system a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account. The Commission's Part 32 rules, the Uniform System of Accounts (USOA), prescribe the books of account for the telephone companies. The Part 32 USOA reflects the telephone company's total operations. The Part 32 USOA, however, is not required to be kept by affiliates of a telephone company. These affiliates maintain their own separate books of account.

provided communications services at tariffed rates and conditions. We propose to modify the second requirement to conform with our proposed modification of the facilities-sharing prohibition of Section 22.903(a). That is, the separate PCS affiliate would not be permitted to have joint ownership with the incumbent LEC of transmission and switching facilities that the latter uses in the provision of landline services in the same in-region market. We note that this proposed requirement would not include requirements for separate officers, separate debt, or independent operation of the PCS affiliate. Any joint research or development would be subject to Part 64 accounting separations. We seek comment on these proposals.

119. In the *Fifth Report and Order* and in the recent *BOC Out-of-Region Notice*, the Commission found that the requirements discussed there would not impose excessive burdens on LECs, while providing "some, albeit not complete, protection against cost-shifting and anticompetitive conduct."[187] We tentatively conclude that this is also true in the case of Tier 1 LEC in-region PCS, in that the *Competitive Carrier* separate affiliate requirement permits greater flexibility for the LEC than the Section 22.903 structural separation requirement, while preserving the competitive safeguards of separate books of account, facilities, and tariffed services between the PCS affiliate and its affiliated LEC. We seek comment on the effect that changes in interconnection tariffing requirements under Sections 251 and 252 of the 1996 Act have on the requirement that the separate affiliate obtain any exchange telephone company service at tariffed rates and conditions. In addition, we tentatively conclude that, consistent with Section 601(d) of the 1996 Act and the interim approach proposed above with respect to BOC cellular services, joint marketing of PCS and LEC landline services should be permitted on a compensatory, arm's length basis. Any such joint marketing must be subject to our Part 64 cost allocation and affiliate transaction rule and the CPNI requirements discussed below. We seek comment on these tentative conclusions.

120. Accounting Safeguards. In its Nonstructural Safeguards Plan, PacTel described its compliance with our Part 32 and 64 cost allocation rules, and included descriptions of changes to its Cost Allocation Manual to reflect its PCS expenditures and transactions. We believe that this type of description is sufficient to satisfy our procedural CAM disclosure requirements. In particular, this filing should address the separation of costs engendered by joint marketing operations. Even with these filing requirements, we believe that only an annual audit will help determine compliance with our accounting, affiliate transaction and cost allocation rules. We note that all CAM changes are also subject to comment and review by the Commission and interested parties. We believe that a description of the carrier's procedures to ensure compliance with our Part 32 and 64 rules, together with copies of the relevant CAM changes, is sufficient for purposes of our initial review of the carriers' Nonstructural Safeguards Plans. This initial review will determine whether adequate accounting procedures are in place. The company's compliance with these procedures, however, can only be determined through the existing annual audit process. We seek comment on this analysis.

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[187] *Fifth Report and Order*, 85 FCC 2d at 1198.

121. CPNI. In our discussion above on BOC cellular operations and the implementation of the 1996 Act, we addressed the effects of the new Section 222 of the Act, which applies to all telecommunications carriers with respect to the use and protection of CPNI.[188] We seek comment on whether the same type of organizational and procedural guidelines for the protection and dissemination of CPNI for which we are seeking comment relating to BOC cellular operations, should apply to the PCS operations of any LEC (including non-Tier 1 LECs) or interexchange carrier possessing CPNI gathered in the provision of landline services. We also seek comment as to whether there are any circumstances under which we should forbear from requiring a description of such organizational structures and procedures, and rely instead on enforcement procedures for any violations of the CPNI statutory mandates. Such circumstances could include a weighing of relative costs and benefits, as well as the significance of the CPNI at issue. In this regard, we tentatively conclude that we need not require the filing of such descriptions by non-Tier 1 LECs and non-dominant interexchange carriers holding PCS licenses. We seek comment on this tentative conclusion and this issue generally. In addition, we seek comment whether, for purposes of applying new Section 222 of the Act, cellular service and PCS should be considered the same "service" (*i.e.*, commercial mobile radio service) such that CPNI gained in the provision of one could be utilized without restriction in the marketing of the other. We also seek comment whether other CMRS, such as paging and Specialized Mobile Radio, should be considered the same "service" as cellular service and PCS for purposes of implementing Section 222 and what distinctions, if any, we should make among these different types of CMRS. Finally, we seek comment whether a toll service provided by means of CMRS (*e.g.*, cellular long distance) should be treated as a distinct "telecommunications service" for purposes of implementing the new Section 222.

122. Interconnection. As we indicated in our discussion of interconnection with respect to BOC cellular safeguards, we observe that the changes effected by the 1996 Act with respect to LEC interconnection obligations, together with the changes proposed in our *LEC/CMRS Interconnection Compensation* rulemaking, are intended to diminish the incidence of discriminatory interconnection practices. These same concerns regarding interconnection discrimination inform our consideration of whether to eliminate immediately the structural separation requirements for BOC cellular services.

123. In the case of LEC PCS, and without prejudice to our decision on BOC cellular structural separation, we believe that two factors render a lesser degree of separation appropriate. First, and most importantly, the public interest benefits we anticipate from permitting LECs somewhat more flexibility in establishing their PCS operations counterbalance the loss of the added level of protection that complete structural separation under Section 22.903 provides. Our proposal that LECs establish nonstructurally separate affiliates for the provision of in-region PCS is intended as an interconnection safeguard that will render visible the LEC's interconnection arrangements with its affiliate. The second

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[188] 47 U.S.C. § 222. Unlike 47 C.F.R. § 22.903(f), there are no rules specifically addressing CPNI in Part 24 or other CMRS rules.

factor is one of timing. Commenters opposing the PacTel Plan raised a number of specific objections to PacTel's Plan despite the carrier's establishment of a separate affiliate for PCS, including objections to the collocation arrangements PacTel offers its affiliate. We believe that, for the most part, the types of interconnection discrimination problems identified by the commenters will be largely addressed by the pending regulatory changes with respect to LEC interconnection set in motion by the 1996 Act and our rulemakings thereunder, which will be contemporaneous with PCS start-up in many areas of the country . In the meantime, our possible retention of structural separation for the in-region BOC cellular service may act as additional protection against anticompetitive actions with respect to PCS competitors of the BOC cellular providers who are seeking interconnection arrangements. We seek comment on this proposal, and ask that parties disagreeing with our interpretation of the likely effect of the legislation and our implementation rulemaking provide specific examples and argument in support of their position.

124. Network Information Disclosure. As we stated in Section III, the new interconnection provisions of the 1996 Act make it a duty of incumbent local exchange carriers "to provide reasonable public notice of changes to the network necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks."[189] of network technical In light of the statutory provision regarding public notice by incumbent LECs of network technical changes and our implementation of that provision, we seek comment on the need for specific PCS rules pertaining to network information disclosure. Commenters supporting a specific Part 24 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

3. Sunset

125. With respect to LEC in-region broadband PCS, we have proposed a set of flexible service safeguards that, we believe, strike an appropriate and non-obtrusive balance between our pro-competitive goals and our goal of expediting in-region LEC-provided broadband PCS service. Nonetheless, assuming that competition in the local exchange market increases to the point where LECs do not have market power in the provision of local exchange service, we anticipate that those safeguards that are not mandated by statute could be relaxed or eliminated. We therefore seek comment on whether the rules proposed here should be subject to a sunset provision. We also seek comment on the appropriate term of such a provision, or the conditions that would justify relaxing or eliminating these restrictions in the future.

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[189] *See* 47 U.S.C. § 251(c)(5).

D. Safeguards for Other CMRS

126. We also note that Congress created the CMRS regulatory classification and mandated that similar commercial mobile radio services be accorded similar regulatory treatment under our rules. Therefore, we tentatively conclude that the nonstructural safeguards discussed above for LEC provision of PCS should apply to Tier 1 LEC provision of other in-region CMRS. We seek comment on this proposal.

VII. CONCLUSION

127. Dynamic changes are taking place in the telecommunications industry, as judicially-imposed restrictions give way to a legislative mandate to open markets and to promote an interconnected network of networks. We believe that the proposals that we make in this Notice are consistent with that mandate and will promote competition in wireless communications markets by applying the least intrusive means to curb the residual market power of the local exchange carriers. We take seriously our proposal to sunset those rules which become no longer necessary after further changes in the telecommunications industry, wrought by the Telecommunications Act of 1996, are in place. We intend to move rapidly to complete the comprehensive review of our CMRS safeguards initiated by this Notice, and to put into place new, streamlined rules which accomplish our goals of promoting wireless competition, limiting the exercise of market power, and establishing regulatory symmetry.

VIII. PROCEDURAL ISSUES

A. *Ex Parte* Presentations

128. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

129. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA.

130. Reason for Action: The Commission is issuing this Notice of Proposed Rulemaking to review our regulatory regime for the provision of commercial mobile services, and to implement certain provisions of the Telecommunications Act of 1996. The proposals advanced in the Notice of Proposed Rulemaking are designed to explore whether the BOC separate subsidiary requirement of Section 22.903 continues to be relevant in today's

marketplace. The Notice also proposes streamlined safeguards for Tier 1 LECs seeking to provide PCS and other commercial mobile services.

131. Objectives: The objective of the Notice of Proposed Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision regarding appropriate competitive safeguards for landline telephone companies seeking to provide wireless services. The Notice proposes two alternatives for modification of Section 22.903, the BOC/cellular separate subsidiary requirement. The first alternative is to retain the rule for in-region provision of cellular service, subject to a sunset period. The second alternative is to eliminate the rule immediately for in-region cellular services. (The Commission waives the requirement for out-of-region cellular service.) Further, the Notice proposes a uniform set of safeguards for Tier 1 LECs seeking to provide PCS and other CMRS services.

132. Reporting, Recordkeeping and Other Compliance Requirements: The LEC/PCS safeguards proposed in the Notice would require that Tier 1 LECs submit to the Commission a nonstructural safeguards plan. Smaller LECs would not be subject to this requirement.

133. Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

134. Description and Number of Small Entities Involved: Because Section 22.903 only applies to the BOCs and because the proposed LEC/PCS safeguards would apply only to the 23 Tier 1 LECs (including the BOCs), no small entities would be affected by the proposals included in the Notice of Proposed Rulemaking.

135. Significant Alternatives Mimizing the Impact on Small Entities Consistent With the Stated Objectives: The Notice proposes to adopt LEC/PCS safeguards only for Tier 1 LECs and not for smaller LECs. A Tier 1 LEC is a local exchange carrier with over $100 million in revenues from regulated telecommunications operations that are subject to the CAM filing requirements of Section 64.903 of the Commission's Rules. The Commission notes that small telephone companies are uniquely positioned to provide wireless services to populations that might otherwise receive them. The Notice points out that the Commission wishes to take no action that would unduly burden or discourage small telephone company entry into cellular and PCS markets, nor do we believe that these companies pose a significant threat of anticompetitive conduct toward potential wireless competitors.

136. Legal Basis. The Notice of Proposed Rulemaking is adopted pursuant to Sections 1, 2, 4, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 332.

137. IRFA Comments. We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses of the IRFA and must be filed by the deadline for comments in response to the Notice of Proposed Rulemaking.

C. Initial Paperwork Reduction Act of 1995 Analysis

138. This Notice of Proposed Rulemaking (NPRM) contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the Federal Register. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

139. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days after a summary of this *Notice* is published in the Federal Register, and reply comments on or before 51 days after a summary of this *Notice* is published in the Federal Register. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments should follow the outline of topics contained in this Notice. Parties are urged not to repeat the regulatory history contained in this Notice, or the arguments they have already submitted that are summarized in this Notice, and to make their comments as concise as possible. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with two copies to Bobby Brown, Wireless Telecommunications Bureau, 2025 M Street, N.W., Room 7130, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

140. Written comments by the public on the proposed information collection are due on or before 30 days after a summary of this *Notice* is published in the Federal Register. Written comments must be submitted by OMB on the proposed information collection on or before 60 days after date of publication in the Federal Register. In addition to comments filed with the Secretary , a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street , N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and

to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain_t@al.eop.gov.

E. Ordering Clauses

141. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4, 222, 252(c)(5), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 252(c)(5), 301, and 303, and Section 601(d) of the Telecommunications Act of 1996, 47 U.S.C. § 152, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

142. IT IS FURTHER ORDERED that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 C.F.R. §§ 1.3, 22.19, all Bell Operating Companies are hereby granted a WAIVER of the provisions of Section 22.903 of the Commission's Rules, 47 C.F.R. § 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein.

143. IT IS FURTHER ORDERED that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 C.F.R. §§ 1.3, 22.19, a waiver of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein, is GRANTED to Bell Atlantic NYNEX Mobile, Inc. and U S West, Inc.

144. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq. (1981).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A:
Record on the Need for Section 22.903

1. Regulatory Parity/BOC Dominance[1]

BellSouth argues that today, unlike 1981 when AT&T was the monopoly provider, there is no reason for singling out the Bell Companies for more restrictive cellular regulation than that governing other LECs with respect to wireless services. BellSouth argues that now, no single company dominates local exchange service throughout the nation. Moreover, it cites statistics indicating that GTE is now the largest U.S.-based local telephone company, with revenues exceeding those of every Bell Company. Similarly, BellSouth observes that in the cellular market, Bell Companies do not have the dominant position. Rather, AT&T is once again in the leading position for cellular, and is one of the five largest cellular/PCS carriers, along with Airtouch, GTE and Sprint and the Bell Companies. BellSouth asserts that GTE is now a more ubiquitous provider of both landline and landline service than most, if not all, of the Bell Companies, nonetheless, GTE is free to provide service in an integrated fashion.[2] In response to the *Cincinnati Bell Order*, BellSouth argued that regulatory parity considerations required the immediate elimination of BOC cellular structural separation because this requirement disadvantages BellSouth and its customers vis-a-vis PCS licensees who are not required to establish separate corporate entities for their PCS operations.[3]

In contrast, AT&T contends that, given the BOCs' continued control of essential landline facilities, the anticompetitive consequences of the elimination of structural separation far outweighs any possible benefits to consumers. AT&T claims that BOCs continue to abuse their control of local exchange bottlenecks to disadvantage wireless competitors with respect to interconnection, as they have since the inception of cellular service, and that interconnection issues are likely to become increasingly contentious in the future as the new CMRS entrants enter into initial interconnection negotiations. According to AT&T, access to the landline network will be of paramount importance to these competitors, and the

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[1] The majority of the comments summarized in this Appendix were drawn from the record developed in the BellSouth Resale Request proceeding prior to BellSouth's withdrawal of that request. The pleading cycle established on the BellSouth Request closed on September 18, 1995. Comments were filed by U S West, Inc. (U S West); Bell Atlantic Corporation (Bell Atlantic); SBC Communications [Southwestern Bell] (SBC); Northern Telecom, Inc. (Northern Telecom); Pacific Bell Mobile Services (PBMS); AirLink, L.L.C. (AirLink); AT&T Wireless Services, Inc. (AT&T Wireless); Radiofone, Inc. (Radiofone); MCI Telecommunications (MCI); Nextel Communications, Inc. (Nextel); Sprint Telecommunications Venture (Sprint Telecom); and National Wireless Resellers Association (NWRA); Communications Workers of America (CWA); National Consumers League; and United Homeowner's Association. Reply comments were received from BellSouth on September 25, 1995. Supplemental Comments were received from AT&T Wireless on September 27, 1995.

[2] BellSouth Request at 13-17.

[3] *Ex Parte* Letter from David J. Markey, BellSouth Corporation to the Honorable Reed E. Hundt, Chairman, FCC, dated November 20, 1995.

Commission should not jeopardize competition by removing an important means for assuring that this access will be provided on a fair and nondiscriminatory basis.[4]

AirTouch, Comcast and Cox argue that effective wireless competition with LECs is dependent upon effective LEC wireless safeguards, because without adequate policies, the incumbent LECs will leverage their monopoly power from their wired networks into new markets and into the wireless industry. They observe that LECs are not like other wireless industry participants. AirTouch, Comcast, and Cox maintain that after over 75 years of government-granted monopoly status, LECs have amassed enormous capital, plant and equipment, and human resources as well as essential bottleneck facilities that can be used to forestall competition. Additionally, they argue, LECs have a huge competitive advantage over other potential service providers because of their unique access to customer proprietary network information and customer calling habits. Any regulatory framework that does not account for the presence of these overwhelming advantages will fail to encourage the development of local loop competition, according to AirTouch, Comcast, and Cox.[5]

In response to BellSouth's Resale Request, many other commenters note that the BOCs are still the dominant providers in the local exchange market and argue therefore, that relief should not be granted to BellSouth, or any of the BOCs, until vigorous competition in broadband wireless services has been achieved. Sprint states that the structural separation rules were adopted to prevent improper cross-subsidization and interconnection abuses, which can only be committed by a firm with market power, which the BellSouth, as well as nearly all the LECs, continue to possess in the local exchange market, despite emergent local exchange competition. Sprint therefore urges the Commission to take a cautious approach to relief from the structural separation requirement.[6]

Sprint cites the McCaw/AT&T Consent Decree and the BOC MFJ Wireless Waiver Order as examples of ways in which the market power of a dominant carrier is controlled to prevent unfair leveraging in competitive markets (i.e., cellular duopolist/competitive long distance markets). Sprint argues that the case for restraint of market power is even more compelling when a cellular carrier's market power is integrated with that of an incumbent LEC that retains nearly 100 percent of the local service customers in its operating area.[7] AT&T Wireless and AirLink argue that BellSouth's comparison of itself to GTE and AT&T is misleading because structural separation was not adopted due to BOC presence in the *wireless* market and it should not be eliminated or waived because other non-BOC companies have a greater *wireless* reach than BellSouth on a nationwide basis. AirLink observes that

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[4] *See, e.g.,* AT&T Comments at 3-14.

[5] Joint Safeguards Ex Parte, at 6-7.

[6] Sprint Comments at 4-8.

[7] Sprint Comments at 5-8, *citing* Stipulation of Final Judgment, *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action No. 94-01555 (HHG).

"[w]hile AT&T may be seeking to use wireless services as a strategy to enter the local exchange market this is merely an *entry* strategy".[8] Nextel observes that where the Commission has permitted BOCs and other local exchange carriers to enter a competitive market on an integrated basis, it has found it necessary to apply alternative safeguards, including, interim access plans, network information disclosure rules, customer proprietary network information requirements, and usage and line-count reporting requirements.[9]

Nextel dismisses BellSouth arguments that AT&T, MCI, Sprint and GTE are competitive threats to its ability to provide its customers with "one-stop shopping" because these carriers are not yet providing local service within BellSouth's territory. Nextel urges that there must be some relation between BOC integrated landline and wireless offerings, and the ability of other carriers to offer such service packages. Thus, Nextel, in effect, asks the Commission to look at the state laws regarding local exchange competition in determining whether relief from structural separations is appropriate for a particular BOC, because in states where local exchange competition is not yet permitted, integrated landline local exchange and wireless services should not present a competitive threat to the BOC.[10]

2. Cross-Subsidy Issues[11]

Cross-Subsidy Arguments Relevant to Structural Separation. According to BellSouth, "[t]he cellular separation rule was adopted in a very different era, during the transition to a competitive telecommunications environment." BellSouth contends that the structural separation requirement may have made sense during the era of rate base/rate of return regulation, marked by both acknowledged and hidden "contributions" or "cross-subsidies" among telephone services -- interstate and intrastate, local exchange and interexchange, competitive and monopoly. However, BellSouth avers, all of that changed with the advent of access charges, price caps and the removal of competitive services from the regulated rate base. Increasingly, BellSouth maintains, the Bell Companies have no meaningful source of "monopoly" funds from which to subsidize cellular service. Under state regulation, BellSouth argues, local exchange service rates have been kept low for years, and local exchange service

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[8] AirLink Comments at 2-5; AT&T Comments at 2-6.

[9] Nextel Comments at 4-6. Nextel cites the example of the Commission's rulemaking regarding the provision of international message telecommunications service (IMTS) between the island of Puerto Rico and off-island points. *See* Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 FCC Rcd 6600 (1987), *aff'd on recon.*, Memorandum Opinion and Order, 8 FCC Rcd 63 (1992). *Id.* at n. 11.

[10] Nextel Comments at 5-9.

[11] The summaries in this section focus on the cross-subsidy issues raised in response to the BellSouth Resale Request that were directed at the broader question of whether Section 22.903 continues to serve the public interest. More specific arguments regarding the direct provision of resold cellular and landline local exchange service by the BOC in its service area are discussed in Section IV above, with respect to implementation of Section 601(d) of the 1996 Act.

revenues are under competitive pressure from competing local exchange providers such as AT&T, MCI, and Sprint. BellSouth also contends that intraLATA toll service is very competitive; access charges have been lowered time and again; and that there are simply no meaningful source of subsidy in light of the profound changes that have taken place in telecommunications regulation in the last fourteen years. As a result, BellSouth states, LECs have neither the incentive nor the ability to cross-subsidize cellular service.[12]

Moreover, BellSouth argues, the Commission has comprehensively revised the Uniform System of Accounts and adopted rules and policies in the *Joint Cost Order* governing joint and common cost allocations and affiliate transactions. It contends that there have been no cross-subsidy problems from the unseparated offerings of landline local and cellular service by the non-BOC local exchange carriers (LECs) such as GTE in over a decade. BellSouth states that, in the fourteen years since structural separation was adopted, the Commission has found no evidence of landline cross-subsidization of cellular service.[13]

In response, commenters cite numerous ways in which cross-subsidization may yet occur. MCI contends that the "economies of scale" that BellSouth refers to are nothing more than monopoly leveraging and cross-subsidization in disguise.[14] Sprint and AT&T warn that a LEC, such as BellSouth, if permitted to integrate cellular and local exchange service offerings, could, without detection, price retail cellular offerings below cost and subsidize the loss through their already excessive rates for LEC/CMRS interconnection.[15] MCI argues that cross-subsidies could occur under integrated cellular and landline operations through transfers of trained personnel, and joint marketing.[16] Radiofone also argues that cross-subsidy can be effectuated in subtle ways such as misassignment of personnel time, CPNI abuses, and misallocation of marketing costs.[17]

Nextel observes that in the last two years, audits conducted by National Association of Regulatory Utility Commissioners (NARUC) have confirmed that both the Pacific Telesis Group and Ameritech Services, Inc. have engaged in extensive cross-subsidization between their landline operations and their affiliated companies, and that recent audits of various BOCs conducted by the Commission have uncovered significant accounting and reporting rule

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[12] BellSouth Resale Request at 7-8.

[13] BellSouth Request at 7-9.

[14] MCI Comments at 13.

[15] AT&T Comments at 7; Sprint Comments at 2-3.

[16] MCI Comments at 11; *accord* Nextel Comments at 12-13 (personnel shifts).

[17] Radiofone Comments at 4-5.

violations.[18] Nextel argues that nonstructural safeguards simply have not been successful in deterring cross- subsidization.[19] It notes that the sharing of personnel raises additional issues regarding the ability of competitors and regulators to detect cross-subsidization.[20] Finally, Nextel contests BellSouth's assertion that price caps serve as an additional preventative against cross-subsidization, relying on a report prepared in the LEC Price Cap Performance Review proceeding on behalf of Cox Enterprises, Inc., that purports to demonstrate that the Commission's existing price cap regime preserves the ability of the BOCs to cross-subsidize for the benefit of their affiliates providing newly developed, competitive services.[21] In addition, some commenters, including Airlink and MCI, note that because cellular rates are no longer subject to tariff, detection of landline to wireless cross-subsidization is made more difficult.[22]

In general, BellSouth replies to opponents' concerns about cross-subsidization by arguing that it will have no meaningful opportunity or incentive to engage in such cross-subsidization, and that nonstructural safeguards are sufficient to deter any cross-subsidization that could possibly occur, just as the Commission has found true for PCS and SMR.[23] BellSouth further argues that the Commission and the courts have repeatedly found that its existing nonstructural safeguards are sufficient to protect against cross-subsidization when LECs provide facilities-based wireless services such as PCS and SMR service on a structurally unseparated basis.

Cross-Subsidy Arguments Specific to BOC Resale of Cellular Service. Sprint and AT&T warn that the LEC could, without detection, price retail cellular offerings below cost and subsidize the loss through its already excessive rates for LEC/CMRS interconnection.[24] AT&T notes that this could be accomplished directly, or indirectly through methods such as

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[18] Nextel Comments at 11, *citing* "An Audit of the Affiliate Interests of the Pacific Telesis Group," NARUC (released July 1994) and "Review of Affiliate Transactions at Ameritech Services, Inc.," NARUC (released May 1995); Order to Show Cause, 10 FCC Rcd 5099 (1995) (Bell Atlantic); Notice of Apparent Liability for Forfeiture and Order to Show Cause, 5 FCC Rcd 7179 (1990) (Southwestern Bell).

[19] *Id.* at 11, *citing* United States General Accounting Office Report to Congressional Requestors, Telecommunications FCC's Oversight Efforts to Control Cross-Subsidization, at 12 (February 1993) (finding instances of misallocation totalling $300 million in which LECs charged expenses to their regulated businesses and their affiliates overcharged regulated carriers for services and supplies).

[20] *Id.* at 13.

[21] Nextel Comments at 12, *citing* "Effect of Video Dialtone Cross-Subsidies on Price Cap Carriers," Report by Snavely, King & Associates, Inc., prepared for Cox Enterprises, Inc., filed in CC Docket No. 94-1, Price Cap Performance Review for Local Exchange Carriers (June 1995), attached.

[22] AirLink Comments at 2-6; MCI Comments at 10.

[23] BellSouth Reply at 23-24.

[24] AT&T Comments at 7; Sprint Comments at 2-3.

exclusive volume-based interconnection agreements between BellSouth and its cellular affiliate in exchange for capacity on the cellular system.[25] In the case of integrated resold cellular and local exchange service, Sprint contends that a LEC could, by hiding its cellular sales costs and actual losses through bundling cellular and local exchange offerings, cross-subsidize its resale of cellular service by allocating what would have been over-earnings at the local level to the resale of cellular service at less than market returns or losses on cellular sales, thus reducing local earnings. In addition, common expense categories could be misallocated to local exchange rather than resold cellular operations.[26]

Sprint explains that there are several weaknesses in BellSouth's claim that the obligations of its facilities-based cellular provider to provide service for resale to all takers at the same price, combined with the Commission's affiliate transaction rules will protect against cross-subsidy, not the least of which is the fact that local exchange revenues are accounted for on a local and not a federal basis. Sprint observes that the fact that BellSouth cellular offers a bulk service discount does not establish the existence of a "market price" for purposes of CC-Docket No. 86-111 and the Commission Rule's Section 32.27 purposes. Sprint states that cellular service is untariffed, and if there are no other significant resale purchasers at the "wholesale for resale" price provided to the BellSouth LEC, a "resale market price" has not been established. Thus, Sprint claims that the fully distributed cost of service must be established and paid by the BOC if direct resale of its affiliate's cellular service is permitted.[27]

In response, BellSouth argues that the only valid issue raised by the opponents is whether its LEC subsidiary, BST, will be likely to subsidize its own resale of cellular service, and that the simple answer is that BST will have no meaningful opportunity or incentive to engage in such cross-subsidization. BellSouth claims that BST would be reselling cellular service as a convenience to customers and to remain competitive, and that it has no incentive to use anticompetitive tactics to dominate a business that "is at best a side line."[28] BellSouth states that cellular resale provides no greater opportunities or incentives for cross-subsidization than exist in facilities-based PCS or SMR service, so that the same safeguards should suffice.[29]

3. Interconnection Issues

The BOCs argue generally that structural separation is no longer required to deter discriminatory interconnection practices. According to BellSouth, the Commission initially

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[25] AT&T Comments at 7-8.

[26] Sprint Comments at 2-3.

[27] Sprint Comments at 2-3 & n.5.

[28] BellSouth Reply at 23-24.

[29] BellSouth Reply at 27.

took a very cautious approach to interconnection for cellular service, which was not then operational, by requiring both structural separation and nondiscriminatory interconnection, including requirements that LECs provide reasonable interconnection to cellular carriers, that landline cellular applicants to disclose their interconnection plans, and conditioning landline cellular license awards on the provision of nondiscriminatory interconnection to the competing cellular carrier. Since that time, the Commission, according to BellSouth, has issued a series of increasingly detailed policy determinations concerning interconnection that require LECs to provide cellular carriers with reasonable, nondiscriminatory interconnection and to negotiate interconnection arrangements in good faith. In addition, BellSouth notes that the Commission's complaint process is available to facilitate compliance.[30]

BellSouth maintains that the cellular industry has been successful in obtaining reasonable and nondiscriminatory interconnection from LECs, including GTE which is not under a structural separations requirement, thus evidencing a lack of interconnection problems. Further, BellSouth claims that its LEC subsidiary provides interconnection services to cellular and other mobile carriers in each of the nine states in its region. In eight states, these arrangements are provided under tariff and by PUC-approved contract in the other state. Under these circumstances, BellSouth argues that there is no realistic potential for interconnection abuse because any facilities-based cellular carrier can obtain interconnection on the same basis as any other, and the reseller in turn obtains pre-packaged interconnected service from the facilities-based cellular carrier.[31]

AT&T, MCI and Nextel challenge BellSouth's assertions that deterrence of discriminatory interconnection arrangements is no longer a reason to retain the structural separation requirement Nextel maintains that because a LEC with wireless operations potentially will compete against other unaffiliated wireless service providers within its market, which are wholly dependent on the LEC for interconnection to the local exchange, the LEC is incented to disadvantage its competitors regardless of whether it is a facilities-based cellular provider or a reseller of cellular service. Moreover, Nextel argues that joint offerings of cellular and landline service present new reasons to discriminate against those who sell unbundled services.[32]

Nextel maintains that LEC/CMRS interconnection issues are, as the Commission itself has repeatedly recognized, vital to the development of wireless competition, and that many questions remain unresolved regarding the full extent of the BOC's interconnection obligations, including the extent and nature of the BOC's mutual compensation obligations.[33]

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[30] BellSouth Request at 10.

[31] BellSouth Request at 9-13.

[32] AT&T Comments at 10-12; MCI Comments at 10; Nextel Comments at 13.

[33] Nextel Comments at 13-14, *citing* the Commission's Equal Access and Interconnection proceeding in CC Docket No. 94-54.

Furthermore, the provision of standard interconnection arrangements under tariff does not disclose the specifics of the interconnection arrangements and does not readily enable detection of discriminatory interconnection policies, according to Nextel.[34] Sprint notes that despite the provision of standard physical interconnection arrangements with CMRS carriers under tariff in most states, the LECs continue to retain the power and incentive to abuse the interconnection negotiation process, by, for example, denying new forms of interconnection that do not advantage the LEC's CMRS affiliate in the marketplace. Sprint argues that static interconnection tariffs do not protect against prospective abuse by BellSouth LECs if they refuse to negotiate new interconnection arrangements or continue to fail to meet their mutual compensation obligations.[35]

In response to opponents, BellSouth states that the Commission has repeatedly found, and has done so as late as October, 1994, that its existing interconnection policies are sufficient to deter discriminatory interconnection even when LECs operate cellular, PCS, or SMR facilities without structural separation, and that the claims to the contrary made by opponents of its Request "cannot be taken seriously."[36]

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[34] *Id.* at 14-15.

[35] Sprint Comments at 3-4.

[36] BellSouth Reply at 17. This is a significant issue in light of the Commission's recent action regarding LEC/CMRS interconnection.

APPENDIX B:
Record on the PCS Nonstructural Safeguards Plan filed by Pacific Telesis

1. Cellular/PCS Regulatory Parity

AirTouch, Cox and Nextel contend that in the *Broadband PCS Order* the Commission did not consider the possibility that a LEC, such as PacTel, would spin-off its cellular interests and thereby be able to offer PCS in its wireline service area under a 30 MHz PCS license, but rather contemplated that LECs would be constrained by their cellular interests and therefore would only be able to acquire 10 MHz .[1] AirTouch also argues that it is inconsistent for the Commission to require BOCs with cellular interests to place their cellular operations in structurally separate subsidiaries and not to impose a similar requirement on BOCs that have PCS operations.[2] AirTouch, Cox and Nextel contend that under the present circumstances the Commission should impose a structural separation requirement on PacTel.[3] In its February 14, 1996 *ex parte* letter, AirTouch contends that nothing in the 1996 Act changes the Commission's ability to impose structural separation for LEC-CMRS if the Commission believes that structural separation will best promote the open, competitive markets the Act hopes to encourage.[4]

PacTel responds that the *Broadband PCS Order* clearly permits any BOC without attributable cellular interests to acquire a 30 MHz PCS license in its serving territory and that when the Commission included this language in the *Broadband PCS Order*, it was well aware of PacTel's plan to spin-off its cellular interests and bid for large PCS licenses.[5] In response to AirTouch's regulatory parity argument, PacTel notes that in the *Broadband PCS Order* the Commission specifically stated that there was not enough information in the record for the Commission to eliminate the separate subsidiary requirement for BOCs providing cellular service.[6]

2. Cross-Subsidization

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[1] AirTouch Comments at 5; Cox Comments at 4, 9; Nextel Comments at 12-13.

[2] AirTouch Comments at 4-8.

[3] *See* AirTouch Comments at 4-8; Nextel Comments at 12-13; Cox Comments at 34. In support of its argument, Cox cites to the then pending telecommunications legislation. Cox states that under the proposed legislation BOC entry into markets such as long distance, video dialtone, manufacturing, telemessaging, alarm monitoring and payphone services is conditioned on the BOC's establishment of structurally separate subsidiaries to provide these services. *Id.*

[4] AirTouch February 14., 1996 Letter, attachment at 2.

[5] PacTel Reply Comments at 2-4 (citing *Request by Pacific Telesis Group and PacTel Corporation for a Waiver of Section 99.204 of the Commission's Rules, Order*, 10 FCC Rcd 168 (1994)).

[6] *Id.* at 7 (citing *Broadband PCS Order* at para. 126 n. 98; *Second CMRS Report and Order* at para. 218).

Cox, Nextel and Sprint all attack PacTel's Plan as insufficient to prevent cross-subsidization. Cox argues that the Commission's cost allocation, affiliate transaction, and other *Computer III* safeguards were not designed to address LEC diversification into quasi-regulated markets that compete against the core LEC monopoly. Cox states that the effectiveness of *Computer III*-type nonstructural safeguards is in doubt because of the Ninth Circuit decision vacating and remanding these rules. Cox argues that the Commission's price cap regulations do not adequately protect against cross subsidization. Cox cites a report prepared by the CPUC Division of Ratepayer Advocates ("DRA") that Cox describes as finding PacTel "engaged in extensive cross-subsidization despite the presence of numerous accounting 'safeguards'." Cox also questions PacTel's accounting for past PCS investment. Cox argues that the Commission should require PacTel to fully disclose its PCS costs and revenues on a line-item basis.[7]

Nextel states that if *Computer III* nonstructural safeguards are to be used for LEC PCS, they must be modified to reflect differences between wireless and enhanced services. Nextel claims that PacTel's Plan is deficient because the Plan identifies legal, management, personnel and systems operation staff resources that Pacific Bell will devote to its PCS affiliate, but it fails to allocate any direct or joint and common costs associated with these resources to PCS.[8] Nextel asks that the Commission require Pacific Bell to comply with expanded cost allocation and affiliate transaction rules and to disclose the scope of its PCS affiliates' activities.[9]

Sprint argues that Pacific Bell's pricing of facilities to its PCS affiliate will likely be done as a "special assembly," allowing Pacific Bell to use "cost" as the basis of providing this service because the service is unique and not otherwise available. Sprint makes three cost accounting recommendations. First, it recommends that contracts for wireless transactions between members of the Pacific Bell family be filed with the Commission. Second, it recommends that Pacific Bell be required to undertake a more detailed separation of its PCS-related costs from its other telephony costs. Third, it states that independent auditors should certify in their annual attestation letter that Pacific Bell is allocating properly all PCS related costs to nonregulated accounts.[10]

PacTel responds that, with regard to past PCS costs, most development costs were born by shareholders, but that a small portion of these costs were paid by Pacific Bell and that these costs have already been refunded to ratepayers.[11] PacTel responds further that it

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[7] Cox Comments at 22-31 (*citing State of California v. FCC*, 39 F.3d 919 (9th Cir. 1994)).

[8] Nextel Comments at 5, 9; *see also* Cox Comments at 25-26.

[9] Nextel Comments at 8.

[10] Sprint Comments at 16-18.

[11] PacTel Reply Comments at 12-14, 26.

will not incur costs that are common to its regulated wireline service and its PCS. PacTel explains that its PCS network is separate from it wireline network and that it will have its own switches, base stations and antennas which will be solely used by PBMS. PacTel adds that the construction, management and maintenance of the PCS network will be done by employees of PBMS and that, unlike its video dialtone service, it PCS operations will not share basic wireline facilities. PacTel asserts that Cox's price cap argument "makes little sense" because PCS costs are unregulated and are therefore already removed from Pacific Bell's and Nevada Bell's price cap calculations.[12] PacTel also dismisses Cox's argument regarding the DRA report. PacTel states that the DRA is an advocacy group and is not an impartial auditor, and that DRA only found that it had concerns about "*possible*" cross subsidization. PacTel adds that the CPUC has not taken any action with respect to the report.[13]

3. Interconnection/Network Disclosure

Cox, Sprint and Nextel also challenge PacTel's Plan on grounds that it does not ensure that PacTel will not provide PBMS with more favorable interconnection arrangements than other CMRS providers. Cox argues that "PacTel's proffering of its intrastate interconnection tariff is an outright repudiation of the Commission's requisite standards for good-faith negotiation on the terms and conditions of interconnection." Cox also argues that the Plan fails because it does not explain how PacTel will meet mutual compensation requirements.[14] Cox maintains that, in order to ensure that PacTel does not engage in discriminatory interconnection, the Commission should require PacTel to: (1) comply with existing rules requiring good-faith negotiation of interconnection arrangements; (2) provide meaningful cost support to justify any interconnection arrangements it offers to its PCS affiliates; (3) demonstrate, by means of a certified interconnection agreement with a non-affiliated PCS provider, that it faces demonstrable competition from a facilities-based competitor prior to its implementation of downward pricing flexibility mechanisms (such as the term discount proposed in the Plan); (4) make mutual compensation available to affiliated and non-affiliated PCS providers for termination of one another's traffic; and (5) meet its long-standing common carriage obligations, as reflected recently in the Commission's ONA and expanded interconnection proceedings, to make the same terms, conditions and type of interconnection available to non-affiliated PCS competitors that it makes available to its own PCS affiliate.[15]

Cox, Nextel and Sprint also assert that they should have the same ability as PBMS to physically locate equipment on Pacific Bell's property. They argue, that under the principles of the Commission's CC Docket 91-141 Expanded Interconnection requirements, that all

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[12] *Id.* at 16-22.

[13] *Id.* at 23, 24 (emphasis original),26.

[14] Cox Comments at 37, 42-47.

[15] Cox Comments at 50.

interconnectors are entitled to the same type, nature and scope of interconnection as similarly situated interconnectors, and that all interconnectors should have the same access as PBMS.[16] Sprint states that there will be inherent non-pricing benefits if there is physical collocation of facilities and maintenance crews. Sprint also argues that PacTel has not explained how it will comply with network disclosure obligations.[17] Nextel claims that the interconnection options referenced in PacTel's Plan may not be responsive to the needs of individual CMRS providers. Nextel states that the Commission should require complete equality between LEC-affiliate and other CMRS provides for all aspects of interconnection. In order to ensure compliance with this standard, Nextel urges the Commission to require LECs to file full reports on all affiliate interconnection arrangements on a periodic basis.[18]

PacTel asserts that the commenters have not shown that any of the interconnection policies contained in its Plan violate federal policy[19] or are discriminatory.[20] In addition, PacTel states that the commenters have not offered any detail on how its Plan fails to meet their interconnection needs.[21] According to PacTel, the only pending issue is whether the Commission is going to retain its good faith negotiation standard or require LECs to provide interconnection to CMRS providers under a tariff.[22] PacTel responds to Cox's argument regarding the use of state interconnection tariffs by stating that it is not improper to use a tariff provided good faith negotiations have taken place prior to the filing of the tariff.[23] PacTel asserts that it cannot shift interconnection costs to its PCS competitors because when it negotiates with a wireless interconnector, it provides cost data for its interconnection rates to the interconnector under a non-disclosure agreement. PacTel also asserts that Cox's concerns about discounts are unfounded because Pacific Bell's discounts are not based on total volume but on the length of the contract and on an individual carrier's projected minutes of use growth. With respect to mutual compensation, PacTel notes that this issue is pending

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[16] Cox Comments at 49; Nextel Comments at 7; Sprint Comments at 7-8.

[17] Sprint Comments at 8, 13-14.

[18] Nextel Comments at 6-8.

[19] PacTel Reply Comments at 31.

[20] *Id.* at 41.

[21] *Id.* at 33.

[22] *Id.* at 11 (citing *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Notice of Proposed Rule Making and Notice of Inquiry*, 9 FCC Rcd 5408 (1994)).

[23] *Id.* at 32 (citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding)*, Report No. CL-379, *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369 at paras. 10-15 (1989)).

before the Commission in a separate docket, and that states that once the Commission reaches a decision on this issue it will comply with that decision. [24]

With respect to the collocation argument, PacTel states that to the extent that any PCS provider wants to place transmission facilities and equipment to interconnect with switched or special access equipment, it can order expanded interconnection service from Pacific Bell's tariff. It argues that there is no basis for the Commission to order the physical collocation of PCS equipment on LEC property, and states that real estate is readily available in the market place and that commenters, such as Cox and Sprint, will probably collocate their PCS equipment with their own facilities. PacTel asserts that the benefit of collocating its equipment is a "benefit of integration" and represents "an economy of scope." PacTel also argues that there is no pricing advantage to the collocation of equipment because there is no distance sensitivity in the rates for interconnection between the switch of the CMRS provider and its serving wire center.[25] Finally, PacTel responds that it will follow network disclosure rules already in effect regarding public notification and public disclosure of technical information. In order to alleviate concerns about PBMS acquiring more favorable interconnection arrangements than other PCS providers, PacTel states that it will make PBMS's contract with Pacific Bell available to a third party upon request under a non-disclosure agreement.[26]

4. Joint Marketing/CPNI

Sprint expresses concern with PacTel's joint marketing plans, and argues that the Commission has not expressly authorized the joint marketing of local exchange services and PCS and urges the Commission to impose structural safeguards to prohibit this practice. Sprint avers that a telephone company service representative taking orders (receiving incoming calls) for monopoly local service should not be permitted to prefer, in any way, its affiliated wireless company over competitive wireless companies and should not be allowed to jointly market monopoly and competitive services.[27]

In response, PacTel argues that the joint use of marketing forces is exactly the type of economy of scope that the Commission felt would benefit the public when it decided that LECs could provide PCS on an integrated basis with its wireline services. However, in order to alleviate possible joint marketing concerns, PacTel states in its reply comments that it will comply with the Commission's Customer Proprietary Network Information ("CPNI")

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[24] *Id.* at 38-42.

[25] *Id.* at 35-37.

[26] *Id.* at 27-34 (citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 Rad. Reg. 2d 1275 (1986); Report No. CL-379, *Declaratory Ruling*, 2 FCC Rcd 2910 (1987); *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 2369 (1989)).

[27] Sprint Comments at 9-12 (citing *U. S. v. Western Electric Co., Inc.*, 1995-1 Trade Cases ¶ 70,973 (D.D.C. 1995)).

requirements in its provision of PCS. PacTel observes that the Commission has imposed CPNI requirements as a way to allow BOCs to engage in integrated marketing and sales of regulated and nonregulated services.[28]

[28] PacTel at 29-30 (citing Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7571 (1991)).

APPENDIX C

CMRS SAFEGUARDS COMPARISON

	Broadband PCS Order Non-Structural Safeguards	Current BOC Cellular Structural Separation (§22.903)	Proposed BOC Cellular Streamlined Structural Separation (Proposed Revisions to §22.903 under Option 1)	Proposed Non-Separated Affiliate Safeguards for Tier 1 LEC PCS (Applicable to BOC Cellular under Option 2)
Independent operation/ separate officers, separate personnel?	No requirements	Full independence, separate officers and personnel for cellular subsidiary	Full independence, separate officers and personnel for cellular subsidiary	Separate corporate structure; independence, separate officers and personnel not required
Separate capitalization?	No requirements	No requirements	No requirements	No requirements
Part 64/Part 32 cost rules apply?	Yes	Yes; few joint costs - primarily affiliate transactions	Yes; few joint costs anticipated - primarily affiliate transactions	Yes; few joint costs anticipated - primarily affiliate transactions
Joint/common computer and transmission facilities?	No requirements	No; must utilize separate facilities for provision of cellular service	Out-of-region: yes; In-region: no, if facility used for incumbent local exchange service	Out-of-region: yes; In-region: no, if facility used for incumbent local exchange service
Joint marketing?	No requirements	Yes, as permitted by §601(d) of 1996 Telecommunications Act	Yes, as permitted by §601(d) of 1996 Telecommunications Act	Yes, as permitted by §601(d) of 1996 Telecommunications Act)
Joint research and development?	No requirements	Yes, but must be on arms-length, compensatory basis	Yes, but must be on arms-length, compensatory basis	No requirements (Part 64 rules apply)
CPNI requirements?	No requirements	No access to LEC CPNI unless publicly available	Implement 1996 Act provisions requiring prior written customer authorization for disclosure	Implement 1996 Act provisions requiring prior written customer authorization for disclosure
Network information disclosure?	No requirements	No requirements	Implement 1996 Act provisions requiring public notice of network changes	Implement 1996 Act provisions requiring public notice of network changes

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